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ABSTRACT

In the Vocational Education Amendments of 1968, Congress authorized the use of federal vocational education funds for contracting with private vocational training institutions for vocational instruction. A study was conducted to determine the extent to which various state statutes and regulations can be construed to authorize or prohibit such contracting in each of the fifty states, the District of Columbia, and the outlying American territories. Information was collected from the following sources: federal law and regulations, state statutes and regulations, and fiscal year 1977 State Plans for Vocational Education. A profile was then developed for each state and outlying area. Although the study was limited by its neglect of factors such as the effect of judicial decisions on authorizing or prohibiting such contracting, it was able to draw the following conclusions: (1) federal statutes and regulations permit such contracts when reasonable justification for them exists; (2) state laws and regulations vary from granting expressed authority to only implying such authority; and (3) a small number of state constitutions restrict the use of public funds for such contracts; and (4) forty-four state plans provide for such contracts despite existing state laws. Also reviewed in the study were the state laws governing the licensing and minimum standards for private vocational training sources. (The appendix contains the state profiles and is organized into six categories based on the clarity of the authorization or prohibition of such contracts.) (ELG)

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A NATIONAL STUDY OF STATE AND OUTLYING AREA STATUTES AND REGULATIONS RELATED TO CONTRACTING WITH PRIVATE VOCATIONAL TRAINING SOURCES FOR VOCATIONAL INSTRUCTION

Prepared for the
Educational Testing Service

by

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The National Foundation for the
Improvement of Education

1978

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EXECUTIVE SUMMARY

A NATIONAL STUDY OF STATE AND OUTLYING AREA STATUTES AND REGULATIONS RELATED TO CONTRACTING WITH PRIVATE VOCATIONAL TRAINING SOURCES FOR VOCATIONAL INSTRUCTION

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March 24, 1978

Prepared for the
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of

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Education Policy Research Institute
Washington, D. C.

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EXECUTIVE SUMMARY

A NATIONAL STUDY OF STATE AND OUTLYING AREA STATUTES AND REGULATIONS RELATED TO CONTRACTING WITH PRIVATE VOCATIONAL TRAINING SOURCES FOR VOCATIONAL INSTRUCTION

Background and Purpose

This legal guide to state statutes and regulations regarding contracting with private training sources for vocational education was prepared as part of a larger project funded by the U. S. Office of Education and conducted by the Education Policy Research Institute (EPRI) of the Educational Testing Service. EPRI engaged the National Foundation for the Improvement of Education, a non-profit corporation of the National Education Association, to undertake the national study which produced this guide for policymakers.

The situation which urged the usefulness of such a study arose after the Vocational Education Amendments of 1968 were enacted by the Congress, which authorized the use of federal funds for vocational education to engage private vocational training institutions. Congress intended to give states and their local education agencies (thereafter LEAs) greater flexibility in devising vocational education programs best suited to their needs and resources. But there has been a lack of clarity about whether, and in which cases, state constitutions and statutes share a similar flexibility toward contracts with private sources of vocational instruction. Hence, this report assesses

the extent to which various state statutes, regulations, and the Fiscal Year 1977 State Plans submitted to the Office of Education, can be construed to permit or to prohibit such contracting by state boards of education and LEAs.

Scope of Study, Sources and Methods

The study surveyed all fifty states, the District of Columbia, and the outlying territories of American Samoa, Guam, Puerto Rico, the Trust Territory of the Pacific and the Virgin Islands, during the period October 1976 to February 1977.

The sources and methods employed by the authors included federal law and regulations, state statutes and regulations, and the FY 1977 State Plans for Vocational Education submitted to USOE. State education codes were reviewed for provisions regarding (a) the general authority of state boards and LEAs to control vocational education, (b) the express or implied authority to contract with private vocational training sources and (c) licensing or accreditation requirements for private or proprietary schools in that state or area. Then, a mail survey of all state departments of education requested relevant state regulations. After analysis, a legal profile of each state's approach to contracting with private vocational education institutions was prepared and returned to the states and areas for verification, comment, and revision on the basis of new information. In the process, state education officials contacted by the authors contributed valuable insights. Final profiles were then drafted.

The result is this national compilation of relevant authorities regarding contracting by public agencies for vocational education. It is intended as a policymakers' guide. With this in mind, a few caveats are in order.

Limitations of the Study

First, the study design did not permit a deep analysis of state constitutions to assess whether their provisions could be construed to forbid or allow the kind of contracting under discussion. Second, the study examines legalities, not political processes; it does not ask why a given state may or may not choose to exercise its potential authority to make private vocational training contracts. Third, no state-by-state review of judicial decisions on the authority of state boards or LEAs to contract with private sources was possible. Instead, we prepared a brief overview of judicial decisions addressing major issues linked to this authority. We emphasize that this report is no substitute for the opinion of a state attorney general who has carefully considered the relevant case law of a particular state or area.

Fourth, a time lag is inevitable in preparing such a guide. It is often many months before new state laws have been codified and disseminated. Profiles are based largely on statutes available in law libraries and regulations furnished by the states or areas during our research,

which ended in February 1977. Finally, while profiles generally reflect the key language of relevant state statutes and regulations, many have been selectively quoted or paraphrased and must obviously be consulted in context by legal counsel to the policymakers who may use this guide.

General Findings and Recommendations

The following section summarizes our overall findings and recommendations concerning both federal and state legal frameworks as they touch upon the authority to contract with private sources for vocational training. The executive summary concludes with a synopsis of the categories under which individual state profiles have been grouped, and the format used to present them.

Federal Findings and Recommendations

1. Federal statutes. Congress expressly authorized the use of federal funds for contracts with private vocational training institutions. It has also imposed three express conditions on this authority: private institutions must 1) significantly contribute to attaining the objective of the State Plan, 2) provide substantially equivalent training at lower cost, or 3) offer equipment or services not available in public schools.

Further, Congress carefully defined a "private vocational training institution" as one which must 1) admit "as regular students only persons who have completed or left elementary or secondary school and who have the ability to

benefit from the training offered"; 2) be legally authorized to provide within that state a program of postsecondary vocational or technical education "designed to fit individuals for useful employment in recognized occupations"; 3) have existed for two years or be specially accredited by the Commissioner; and 4) be accredited in accord with certain statutory provisions.

Findings. Federal statutes do not appear to unduly constrain such contracts. They require reasonable justification for deciding to enter them. However, the statutory definition of private vocational institutions raises two interpretive questions. First, does the requirement that a private vocational institution admit as regular students only those who have completed or left elementary or secondary school mean that they must admit only graduates or school leavers? Or does the statute's qualifying phrase, "as regular students" allow admitting special students who have neither graduated nor left school? We conclude that such institutions could admit as special students persons still enrolled in public schools.

Second, does the federal requirement that private institutions provide a program of postsecondary vocational or technical education mean that contracts may not be made with institutions which offer only secondary programs? We conclude that this interpretation matches statutory language and Congressional intent, yet we do not read this part of the statutory definition as prohibiting a contract for training secondary school pupils with a private source which offers a postsecondary program.

Recommendation. The two issues are sufficiently confusing that the statute could discourage the making of private-source vocational training contracts. If this chilling effect is shown to exist, we recommend that the Office of Education urge Congress to amend the statutory definition.

2. Federal regulations. Existing regulations do not reflect a narrow interpretation of the statutory authorization to contract with "private vocational training institutions"; rather, the 1970 regulations said that contracts could be made with "public or non-public agencies or institutions." In the 1975 regulations, the Office of Education dropped the phrase "public or non-public agencies or institutions" and replaced it with the statutory wording. Yet the comments which prefaced the text of the 1975 regulations continue to state that "contracting is not limited to" private institutions and may include "public or non-public agencies or institutions."

Recommendation. Final regulations to implement the Education Amendments of 1976 and the Vocational Education Technical Amendments will soon be issued. In their absence, we can make no recommendation beyond alerting readers to this apparent inconsistency. If the new regulations are similarly broad, and to the extent they may exceed what Congress intended, we suggest that OE may wish to recommend passage of broader statutory authority.

State Findings and Recommendations

1. State constitutional provisions. Although a fine-grained analysis of these was not part of our study, we found that a small number of state constitutions appear to restrict or prohibit state boards or LEAs from making private contracts (or have been interpreted by state attorneys general or state courts to do so). In most such cases, the constitutional provisions involved impose restrictions on the use of public funds, e.g. in Kentucky and Mississippi.

Recommendations. State boards could seek more current opinions from their state attorneys general. State constitutional amendments could be proposed to permit such contracts.

2. State statutes. These vary widely. Some grant express authority to enter into contracts with private vocational training institutions (California, Ohio); others make less comprehensive legislative authorizations (Colorado, Kansas); still others give implied authority to state boards. Further, implied authority varies from that which is broad and general (Michigan), to narrow (New Jersey). Narrow authority correspondingly narrows the likelihood that state courts would find vocational education contract authority proper.

Finding. Thus, the main legal barrier to state boards and LEAs which wish to contract with private vocational training sources is the lack of express statutory authority to do so.

Recommendation. State boards which want a more flexible system for delivering vocational training should therefore first seek a current attorney general's opinion on their implied powers. If this opinion shows insufficient implied authority, the legislature should be urged to enact specific authorizing legislation.

3. State regulations. Our findings here parallel the findings about state statutes. In the majority of states, there are no regulations which deal specifically with contracting for vocational training. In the few which have such regulations, they do not prohibit contracts with private vocational sources, but merely imposes conditions or limitations upon them.

The silence of most state administrative codes or regulations as to state board or LEA powers to contract can, in most cases, be directly traced to the absence of express statutory authority to contract with private sources of vocational instruction. In other cases, this silence stems from the fact that some state boards regulate in less detail, overall.

Recommendation. We make no general recommendation here. It is merely suggested that the state profiles which follow offer examples of some state regulations which may serve as useful models on the vocational training issue.

4. State Plans for FY 1977. No State Plan can, in itself, legally authorize a state board or LEA to contract with private sources of vocational training. Federal

regulations for 1977 State Plans laid down three requirements regarding the state's authority under state law to carry out the State Plan: 1) the Plan had to be certified by the state attorney general or other appropriate official; 2) the Plan had to contain copies of or citations to all pertinent state laws and interpretations of those laws by courts or state officials; and 3) in the event of any material change in pertinent state law which would affect programs under the Plan, the state board must submit an amended administrative plan to the U. S. Commissioner of Education.

These federal regulations lead to the questionable presumption that whatever is in the State Plan is authorized under state law. The State Plans of 44 states, the District of Columbia, and four outlying areas provide for either the state board or LEAs, or both, to contract for vocational education services.

Why does this apparent contradiction exist between what a Plan may assert, and what existing state laws may allow? 1) The state may wrongly assume that federal authority for contracting with private sources is sufficient, whatever state law. 2) Contract provisions in some State Plans may have been drafted as "compliance documents" without due consideration of the legal issues. 3) State officials who review and approve State Plans may not have fully considered the legalities. 4) Federal officials of OE when reviewing FY 77 State Plans, may not have made an independent determination of whether states possess authority under state law to implement the contractual powers their Plans describe.

Recommendations. Both levels of government need to act. States should review the legalities of their implied authority to insure that future State Plans accurately reflect their real situation. There should be improved federal legal review of this authority under state laws, which may be merely asserted in proposed State Plans.

5. State licensing and minimum standards for private vocational training sources. 48 states have statutes governing licensing and minimum standards for such institutions. These do not restrict the ability of public education agencies to make contracts. Rather, they limit the pool of potential contractors by establishing minimum standards for licensing. These minima vary widely from state to state. Among the most stringent are those of California, Colorado, Kansas, Kentucky, Louisiana and New York. States which merely require certification or licensing (and sometimes a surety bond) without specific, detailed statutory requirements include Alabama, Arizona, Michigan, Ohio and Wyoming. There is wide variance in the composition and authority of certification boards as well. Some states authorize the same board which controls vocational education to license proprietary schools. Others use the state board of education; still others establish a completely separate licensing board. Many state licensing statutes accept a school accreditation by a nationally or regionally recognized association as evidence of compliance with that state's minimum standards.

Recommendation. Since state statutes of this type seem to present no barrier to contracting with private sources of vocational education, no recommendation is made.

Categories of State Profiles

The general analyses capsulized above take concrete form in the profiles of individual states which summarize their laws and regulations concerning the authority of state boards and LEAs to make contracts with private sources of vocational education.

The state profiles which are the heart of this guide fall into six major categories:

I. States in which both the state boards and LEAs have authority to contract with private sources. Thirteen states, Puerto Rico and the Virgin Islands fall into this group.

II. States where neither the board nor LEAs have authority to contract with private vocational training sources. Six states and the District of Columbia are included in this classification.

III. States where the board appears to have authority to contract with private sources, but LEAs do not. This category is comprised of eight states.

IV. States in which it is unclear whether the state board or LEAs have authority to make such contracts. Guam, American Samoa, the Trust Territory of the Pacific, and six states are included.

V. States where the board has authority to contract with private sources, but where it is unclear that LEAs do. Sixteen states fall into this group, the largest in our study.

VI. One state, Wisconsin, composes a unique category: it is unclear whether the state board has authority to make private vocational education contracts, but it appears that LEAs cannot.

It should be underscored that, while our conclusions may not be shared by all legal experts, it is our best judgment that these categories appear to describe accurately the current situation of each state's law with regard to private vocational education contracts.

Format of State Profiles

Each profile contains:

1) State statutes pertinent to control of vocational education;

2) State statutes or state constitutional provisions related to authority to contract with non-public agencies for vocational services;

3) State regulations on this subject;

4) Provisions of the Fiscal Year 1977 State Plan for Vocational Education which was submitted to the USOE;

5) State statutes and/or regulations setting minimum standards for licensing proprietary schools; and

6) A brief policy analysis.

An Alphabetical Index to State Profiles will be found on pages 94 - 96.

I. Introduction and Overview of the Study

A. Introduction

This report presents part of the research findings of a larger project funded by the U.S. Office of Education and conducted by the Education Policy Research Institute (EPRI) of Educational Testing Service. EPRI has contracted with the National Foundation for the Improvement of Education, a non-profit corporation created by the National Education Association, to conduct this national study of state and outlying area statutes and regulations related to contracting with private training sources for vocational education instruction. The report and its appendix are the result of this study.

Although this document is in the form of a report to EPRI and will be included in its larger study of the same subject, it will be of interest to a much broader audience. State vocational education policymakers should find this report useful in considering the legal approaches other states have taken to contracting with private training sources for vocational education instruction. To the extent that state vocational education policymakers are interested in contracting with private training sources as a means of developing a more flexible vocational education delivery system, this

report should provide ideas about the different ways state statutes and regulations can be tailored to fit the particular needs of an individual state. The report does not argue the merits of such a policy. Instead it presents, analyzes, and categorizes various state legal provisions that could be construed to authorize or prohibit such contracting with private vocational training sources.

The remainder of this introduction and overview sets forth (1) the background and purposes of the study; (2) the methodology; (3) the limitations of the study; and (4) the organization and structure of the study.

B. Background and Purposes

In the Vocational Education Amendments of 1968, Congress authorized the use of federal vocational education funds for contracting with private vocational training institutions for vocational instruction. 1/ By providing this discretionary

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1/ The authority presently in effect appears in §122(a)(7) of the Vocational Education Act of 1963, as amended (20 U.S.C. 1262(a)(7)). See also §108(11) of the Act (20 U.S.C. 1248(11)) for the definition of "private vocational training institution."

However, the designation of these sections will soon change. Congress revised the Vocational Education Act in the Education Amendments of 1976 (Pub. L. 94-482. 90 Stat. 2081). In doing so, Congress did not reenact [footnote continues]

authority to states, Congress intended to permit states desiring to do so to utilize the resources and facilities available in private vocational training institutions as part of a more flexible vocational education delivery system. 2 / This report attempts to determine the extent to which various state statutes and regulations could be construed to authorize or prohibit such contracting in each of the fifty states, the District of Columbia, and the outlying areas. 3 /

[footnote continued from previous page]

either the authorization for such contracting or the definition of "private vocational training institution." However, Congress subsequently enacted the Vocational Education Technical Amendments (Pub. L. 95-40)(1977). Included in these technical amendments was a continuation of the authority for such contracting and the definition of "private vocational training institution."

Consistent with the revised Act and the technical amendments, the statutory authority for such contracting has been designated as §120(b)(1)(N) of the Vocational Education Act of 1963, as amended (20 U.S.C. 2330 (b)(1)(N)) and the statutory definition of "private vocational training institution" has been designated as §195(21) of the Act (20 U.S.C. 2461(21)). Pursuant to §204(a)(2) of Pub. L. 94-482, the effective date of these redesignated provisions is October 1, 1977.

2 / H.R. Rep. No. 1647, 3 U.S. Code Cong. and Adm. News, (1968), pp. 4170-4171.

3 / Trust Territory of the Pacific, American Samoa, Guam, Puerto Rico, and the Virgin Islands.

C. Methodology

This report draws upon a variety of legal souces, including federal law and regulations, state statutes and regulations, and the Fiscal Year 1977 State Plans for Vocational Education submitted to the U.S. Office of Education by the states and outlying areas. With respect to state statutes, state education codes were reviewed for provisions related to (a) the general authority of bodies authorized under state law to control vocational education, e.g., state boards of education (State Boards) and local educational agencies (LEAs);[4] (b) the express or implied authority of State Boards and LEAs to contract with private vocational training institutions for vocational instruction; and (c) requirements

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4 / We use the terms "State Board" and "LEA" in the same sense in which they are defined in the Vocational Education Act, as amended. Section 108(8) of the current Act (20 U.S.C. 1248(8)) defines a "State Board" as "a State Board designated or created by State law as the sole State agency responsible for the administration of vocational education, or for the supervision of the administration thereof by [LEAs] in the State." [When the revised Vocational Education Act becomes effective October 1, 1977, this section will be designated as §195(9) of the Act (20 U.S.C. 2461(9)].

With respect to LEAs, §108(9) of the current Act (20 U.S.C. 1248(9) defines a "local educational agency" as "a board of education or other legally constituted school authority having administrative control and direction of public elementary or secondary schools in a city, county, township, school district, or political subdivision in a State, or any other public educational institution or agency having administrative control and direction of a vocational education program." [§195 (10) (20 U.S.C. 2461(10)].

related to the licensing or accreditation of private or proprietary schools.

Since there was no current national compilation of state education regulations at the time we conducted our research, letters were sent to state departments of education requesting copies of relevant regulations.

State statutes and regulations were then analyzed and a legal profile of each state and outlying area was prepared. Each profile, which contained relevant provisions of statutes, regulations and the FY 77 State Plan, was then sent to the state or outlying area for verification, comment, and updating. Based on our original research and more recent state information, the final profiles of states and outlying areas were completed and categorized.

D. Limitations of the Study

The study essentially describes and analyzes by state and outlying area, statutes and regulations which could be construed to authorize or prohibit contracting with private vocational training sources. Since the study is primarily focused on statutes and regulations, several limitations must be discussed.

First, the design of the study did not provide for an analysis of state constitutions to determine if they might

contain articles or provisions that could be construed to authorize or prohibit contracting with private vocational training institutions. Although such an endeavor is beyond the scope of this analysis, we have included references to several state constitutions where these have been brought to our attention by several states or where they have been cross-indexed within certain state codes. In this limited number of states, various interpretations of the state constitution were cited as the reason why these states could not enter into such contracts.

Second, this study does not purport to determine why a state or outlying area that has authority under state or area law to contract with private vocational training sources does or does not exercise that authority. Instead it attempts to determine, based primarily on a review of relevant statutes and regulations, whether such statutes and regulations in each state or outlying area could be construed to authorize or prohibit contracting with private vocational training sources.

Third, the study design did not incorporate a state by state analysis of judicial decisions related to the authority of State Boards or LEAs to contract with private vocational training sources. Instead, the study contains a brief overview of a range of judicial decisions which have addressed major issues related to the authority of State Boards or LEAs

to enter into such contracts. 5 /

The practical effect of this limitation is that the relevant statutes and regulations of each state have been construed without a systematic analysis of case law in each state. Although the report includes a general overview of representative case law related to this area, it is entirely possible that a comprehensive analysis of case law for a particular state could produce an interpretation of relevant statutes which differs from the one we have advanced in this report. Consequently, we wish to emphasize that this report is no substitute for the opinion of a state attorney general which has carefully considered the relevant case law of a particular state.

Fourth, state statutes and regulations are frequently amended. There is a gap between the time state legislation is enacted and the time it is codified and disseminated. Although we have asked states and outlying areas to notify us of recent amendments to statutes or regulations, the state and outlying area profiles are largely based on state and outlying area statutes in law libraries and relevant regulations furnished by the states or outlying areas. Thus, if a state or outlying area has not informed us about recent amendments,

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5 / See infra, pp. 35 - 58.

the profile reflects the law as it was when the research was undertaken (October 1976-February 1977).

Fifth, although many of the laws and regulations contained in the individual state and outlying area profiles have been quoted selectively or paraphrased, the profiles generally reflect the key language of relevant statutes and regulations. Citations to all statutes and regulations have been included. However, where key language has been quoted selectively or statutes have been paraphrased, the body and text of the statute or regulation should be consulted so that the appropriate language appears in the proper context.

E. Organization and Structure of the Study

The remainder of the study is divided into three sections and an appendix. Section II presents an overview of the federal legal framework for contracting with private vocational training institutions and necessarily traces the historical development of these provisions in federal statutes and regulations. Section III contains an overview of the state legal framework for contracting with private vocational training sources and sets forth six categories of state

laws and regulations that emerged from our analysis.[6] Section IV contains our general conclusions and recommendations about the federal and state legal frameworks for contracting with private vocational training institutions and sources.

The appendix includes the individual profiles for each state, the District of Columbia, and the outlying areas. These profiles are grouped into the six categories of state laws and regulations that emerged from our analysis. Each profile contains six parts: (a) state statutes related to control of vocational education; (b) state statutes or state constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services; (c) state regulations related to contracting for vocational education services; (d) provisions of the FY 1977 state plan for vocational education related to vocational education under contract; (e) state statutes and/or regulations related to the licensing of proprietary schools; and (f) policy

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6 / These categories are: (1) both the State Board and LEAs appear to have authority to contract with private vocational training sources; (2) neither the State Board nor the LEAs appear to have authority to contract with private vocational training sources; (3) the State Board appears to have authority to contract with private vocational training sources, but it does not appear that LEAs do; (4) it is unclear whether the State Board or LEAs have authority to contract with private vocational training sources; (5) the State Board appears to have authority to contract with private vocational training sources, but it is unclear whether LEAs do; (6) it is unclear whether the State Board has authority to contract with private vocational training sources, but it appears that LEAs do not.

analysis. The analysis is concise and focuses largely on (a) whether there appears to be express or implied authority for such contracting; (b) whether such contracting appears to be expressly or impliedly prohibited; (c) what the FY 77 State Plan says about such contracting; and (d) whether there are unique legal questions raised by legal provisions which may indirectly, or by inference, prohibit or restrict contracting with private vocational training sources.

II. Overview of the Federal Legal Framework for Contracting With Private Vocational Schools for Vocational Instruction

A. Introduction

The federal legal framework for contracting for vocational education with private training sources is best understood by describing and analyzing the historical development of the authorizing legislation and the regulations promulgated to implement it. Thus, this section will consider (1) provisions in the Vocational Education Amendments of 1968; (2) the 1970 Vocational Education regulations; (3) the Education Amendments of 1974; (4) the 1975 Vocational Education regulations; (5) the Education Amendments of 1976; (6) the proposed 1977 Vocational Education regulations; (7) the Vocational Education

Technical Amendments enacted after the Education Amendments of 1976; and (8) observations about the final 1977 Vocational Education regulations.

Although the statutory authority to use federal vocational education funds to contract with "private vocational training institutions" and the statutory definition of "private vocational training institution" are identical to those enacted in the Vocational Education Amendments of 1968 we have traced the historical development of relevant statutory provisions and regulations as an aid to understanding their origin, purpose, and application.

B. Provisions in the Vocational Education Amendments of 1968

In the Vocational Education Amendments of 1968, Congress (a) clearly authorized the use of federal vocational education funds for contracts with "private vocational training institutions";[7] and (b) referred to "cooperative arrangements with other agencies, organizations, and institutions" in the development of programs described in the state plan for vocational education.[8] We will consider what Congress

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7 / Sec. 122(a)(7) of the Vocational Education Act of 1963, as amended, (20 U.S.C. 1262(a)(7)). See supra, note 1 for a description of the redesignation of this provision.

8 / Sec. 123(a)(9) of the Act (20 U.S.C. 1263(a)(9)).

intended these provisions to mean for contracting with private vocational training sources for vocational instruction.

1. Contracts with Private Vocational Training Institutions

Section 122(a)(20 U.S.C. 1262(a)) of the Vocational Education Act of 1963, as amended, provided that "Grants to States under this part may be used, in accordance with State plans approved pursuant to section 123, for the following purposes." One of the "following purposes" for which the use of federal funds was authorized was

> provision of vocational training through arrangements with private vocational training institutions where such private institutions can make a significant contribution to attaining the objectives of the State plan, and can provide substantially equivalent training at a lesser cost, or can provide equipment or services not available in public institutions. Sec. 122(a)(7) (20 U.S.C. 1262(a)(7)). [Emphasis added.]

Congress did not, in the 1968 Amendments, define the term "vocational training."[9] However, Congress did include

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9 / At the time the 1968 Amendments were enacted, the term "vocational training" appeared to be encompassed within the statutory definition of "vocational education." (As discussed infra, at pp. 22 - 23, Congress did define the term "vocational training" in the Education Amendments of 1974). Section 108 (1) of the Act (20 U.S.C. 1248(1)) defined "vocational education" as "vocational or technical [footnote continues]

[footnote continued from previous page]

training or retraining which is given in schools or classes (including field or laboratory work and remedial or related academic and technical instruction incident thereto) under public supervision and control or under contract with a State board or local educational agency and is conducted as part of a program designed to prepare individuals for gainful employment (including volunteer firemen) as semiskilled or skilled workers or technicians or subprofessionals in recognized occupations and in new and emerging occupations or to prepare individuals for enrollment in advanced technical education programs, but excluding any program to prepare individuals for employment in occupations which the Commissioner determines, and specifies by regulation, to be generally considered professional or which requires a baccalaureate or higher degree; and such term includes vocational guidance and counseling (individually or through group instruction) in connection with such training or for the purpose of facilitating occupational choices; instruction related to the occupation or occupations for which the students are in training or instruction necessary for students to benefit from such training; job placement; the training of persons engaged as, or preparing to become, teachers in a vocational education program or preparing such teachers to meet special education needs of handicapped students; teachers, supervisors, or directors of such teachers while in such a training program; travel of students and vocational education personnel while engaged in a training program; and the acquisition, maintenance, and repair of instructional supplies, teaching aids, and equipment, but such term does not include the construction, acquisition, or initial equipment of buildings or the acquisition or rental of land. Such terms includes industrial arts education programs in cases where the Commissioner determines by regulation that such programs will accomplish or facilitate one or more of the purposes of the first sentence of this paragraph.

in the Act a definition of "private vocational training institution" which, requires, in part, that such institutions be accredited and offer programs of postsecondary instruction. 10 / This emphasis on contracting with private

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10 / Section 108(11) of the Act (20 U.S.C. 1248(11)) defined a "private vocational training institution" as a "business or grade school, or technical institution or other technical or vocational school, in any State, which (A) admits as regular students only persons who have completed or left elementary or secondary school and who have the ability to benefit from the training offered by such institution; (B) is legally authorized to provide, and provides within that State, a program of postsecondary vocational or technical education designed to fit individuals for useful employment in recognized occupations; (C) has been in existence for two years or has been specially accredited by the Commissioner as an institution meeting the other requirements of this subsection; and (D) is accredited (i) by a nationally recognized accrediting agency or association listed by the Commissioner pursuant to this clause, or (ii) if the Commissioner determines that there is no nationally recognized accrediting agency or association qualified to accredit schools of a particular category, by a State agency listed by the Commissioner pursuant to this clause, or (iii) if the Commissioner determines that there is no nationally recognized or State agency or association qualified to accredit schools of a particular category, by an advisory committee appointed by him and composed of persons specially qualified to evaluate training provided by schools of that category, which committee shall prescribe the standards of content, scope, and quality which must be met by those schools meet those standards. For the purpose of this subsection, the Commissioner shall publish a list of nationally recognized accrediting agencies or associations and State agencies which he determines to be reliable authority as to the quality of education or training afforded." (Emphasis added.) See supra, note 1. for a description of the redesignation of this provision.

postsecondary vocational training institutions is clearly reflected in the legislative history of the Act. The Conference Report stated that

> The House bill, in the definition of "private vocational training institution" provided that the program offered by such institution must be a postsecondary program. The Senate amendment has no such restriction. The Senate recedes. 11 /

The legislative history also reflects Congressional intent with respect to authority to contract with "private vocational training institutions". The report of the House Committee on Education and Labor indicated that, although the provision was not mandatory because of the problems this might impose upon state administration, the Committee intended that

> maximum feasible use be made of existing private capabilities in this field, in order that available funds may best be used to expand course offerings, provide training opportunities for more students, and reduce costs. In short, the Committee desires to expand high quality vocational opportunities without regard to whether they are made available through public or private facilities. 12 /

Thus, Congress in the Vocational Education Amendments of 1968, clearly authorized contracting with "private vocational

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11 / H.R. Rep. No. 1938, 3 U.S. Code Cong. and Adm. News, (1968), p. 4210.

12 / H.R. Rep. No. 1647, 3 U.S. Code Cong. and Adm. News, (1968), pp. 4170-4171.

training institutions" and clearly defined what the phrase meant, i.e., accredited private vocational training institutions offering programs of postsecondary instruction. 13/

2. Cooperative Arrangements With Other Agencies, Organizations, and Institutions

Section 123(a)(20 U.S.C. 1263(a)) of the Vocational Education Act, as amended, governs state plans for vocational education and provides, in part, that "The Commissioner shall approve a plan submitted by a State if he determines that the plan submitted for that year" meets a series of provisions specified in §123. One of these is that the state plan

> provides that in the development of vocational education programs, services, and activities under this title, there may be, in addition to the cooperative arrangements provided in paragraph (8), cooperative arrangements with other agencies, organizations, and institutions, concerned

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13/ See also §108(1) of The Act (20 U.S.C. 1.48(1)) which, in part, defined the term "vocational education" as "vocational or technical training or retraining which is given in schools or classes . . . under public supervision and control or under contract with a State board or local education agency . . ." [Emphasis added.] It is unclear whether this definition was intended to convey independent authority for contracting with other than "private vocational training institutions". However, we note that Congress included this in the definitions section of the Act and when referring to the authorized use of funds, referred specifically to contracts with "private vocational training institutions" and not to contracts with other institutions or organizations.

> with manpower needs and job opportunities, such as institutions of higher education, and model city, business, labor, and community action organizations (§123(a)(9) (20 U.S.C. 1263 (a)(9)) [Emphasis added.]

Congress did not define the term "cooperative arrangements" in terms of a contract for vocational education or training. Perhaps the clearest indication of what Congress meant by a "cooperative arrangement" is provided by §123(a)(8), referred to in §123(a)(9) above as "in addition to cooperative arrangements provided in paragraph (8)".

Section 123(a)(8) has the effect of requiring the Commissioner to determine, prior to approval, that a state plan submitted for that year

> provides for entering into cooperative arrangements with the system of public employment offices in the State approved by the State board and by the State head of such system, looking toward such offices making available to the State board and local educational agencies occupational information regarding reasonable prospects of employment in the community and elsewhere and toward consideration of such information by such board and agencies in providing vocational guidance and counseling to students and prospective students and in determining the occupations for which persons are to be trained; and looking toward guidance and counseling personnel of the State board and local educational agencies making available to public employment offices information regarding the occupational qualifications of persons leaving or completing vocational education courses or schools, and toward consideration of such information by such offices in the occupational guidance and placement of such persons;

The sense in which the term "cooperative arrangements" is used in §123(a)(8) does not appear to encompass contracting for vocational training or instruction. Instead it appears to indicate a "cooperative arrangement" involving the exchange and use of "occupational information" and "occupational qualifications".

It is also significant that §123(a)(9), in referring to "cooperative arrangements", discussed them in the context of the "development of vocational education, programs, services, and activities" (emphasis added), rather than the conduct or implementation of such programs.

Thus, it does not appear that the reference to "cooperative arrangements with other agencies, organizations, and institutions" can be construed as authority to contract with them for vocational education. This interpretation is reinforced by the legislative history, in which the Conference Committee report states that

> The House bill amended the State plan requirements of existing law to provide that in the development of vocational education programs there may be in addition to the cooperative arrangements now provided by section 5(a)(4), cooperative arrangements with other agencies concerned with manpower and job opportunities such as institutions of higher education, model cities, and community action organizations. The Senate amendment contained in a comparable provision but extends the cooperative arrangement not only to the development of programs but also to their conduct. In addition the Senate amendment

> required such arrangements and the House bill merely authorized them. The conference substitute follows the provisions of the House bill, but includes labor and business organizations among the listed agencies and organizations with which cooperative arrangements can be made. [Emphasis added.] 14 /

The legislative history clearly indicates that Congress considered extending cooperative arrangements "not only to the development of programs but also to their conduct". However, Congress rejected this extension and chose language relating "cooperative arrangements" to the development, rather than the conduct of vocational education programs.

C. The 1970 Vocational Education Regulations

In 1970 the Office of Education issued revised regulations for state vocational education programs. The regulations stated, in part, that

> (1) vocational instruction shall be provided either under public supervision or control . . . or under contract with the State Board or local educational agency as provided in §102.5 §102.4(a)(1), 35 F.R. 7336, (May 9, 1970). [Emphasis added.] 15 /

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14 / Conference Rept. No. 1938, 3 U.S. Code Cong. and Adm. News, (1968), p. 4213.

15 / The statutory basis for this provision appears to be §108(1) of the Act (20 U.S.C. 1248(1)). See supra, note 13.

Section 102. 5 of the 1970 regulations governed "Vocational instruction under contract" and referred in subsection (a) to contracts with "public or non-public agencies or institutions" rather than to contracts with "private vocational training institutions". The regulations provided that

> arrangements may be made for the provision of any portion of the program of instruction on an individual or group basis by public or non-public agencies or institutions (other than the State Board or local education agency) through a written contract with a State Board or local educational agency. (§102.5(a), 35 F.R. 7338, (May 9, 1970)) [Emphasis added.] 16/

The 1970 regulations further required that the contract "describe the portion of instruction to be provided by such agency or institution and incorporate the standards and requirements of vocational education" described in federal vocational education regulations and the state plan (§102.5(a), 35 F.R. 7338, (May 9, 1970)).

Certain preconditions to the exercise of such contract authority were imposed by the regulations. Such contracts could be entered into "only upon a determination by the

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16/ Although the 1970 regulations did not contain a citation to legal authority for each provision of the regulations, it appears that the Office of Education relied on the broad definition of §108(1) of the Act as authority to promulgate regulations that authorized contracting with "public or non-public agencies or institutions" rather than with only "private vocational training institutions", as defined. As indicated, supra, note 13, it is unclear whether §108(1) was intended to provide independent authority for contracting.

State Board or local educational agency of satisfactory assurance that:

> (1) The contract is in accordance with State or local law; and
>
> (2) The instruction to be provided under contract will be conducted as a part of the vocational education program of the State and will constitute a reasonable and prudent use of funds available under the State plan.
>
> Such contract shall be reviewed at least annually by the parties concerned." (§102.5 (a), 35 F.R. 7338, (May 9, 1970))

The regulations also referred specifically in §102.5 (b)(1) to "private postsecondary vocational training institutions" and defined them by incorporating by reference the statutory definition of "private vocational training institution" set forth in §108(11) of the Act.[17] (§102.5(b)(2), 35 F.R. 7338, (May 9, 1970)). They also stated that postsecondary vocational instruction provided in other than public institutions may be provided

> only through arrangements with private post-secondary training institutions . . . where the State Board or local educational agency determines that such private institutions can make a significant contribution to attaining the objectives of the State Plan, and can provide substantially equivalent training at a lesser cost, or can provide equipment or services not available in public agencies or institutions (§102.5(b)(1), 35 F.R. 7338, (May 9, 1970)).

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17 / See supra, note 10 for the statutory definition of "private vocational training institution".

Section 102.5(a) of the 1970 regulations appears to have interpreted the statutory authority for contracting for vocational training broadly. Rather than referring to contracting with "private vocational training institutions" as defined, §102.5(a) indicates that contracting was authorized with "public and non-public agencies and institutions". The regulations do not define this phrase. It is unclear whether Congress intended to authorize contracting with the range of organizations described in §102.5(a) of the 1970 regulations. 18 /

D. The Education Amendments of 1974

In the Education Amendments of 1974 Congress defined the term "vocational training." 19 / Section 108(14) of the Vocational Act of 1963, as amended, (20 U.S.C. 1248(14)) defines "vocational training" to mean

> training or retraining which is conducted as part of a program designed to prepare individuals for gainful employment as semiskilled or skilled workers or technicians or subprofessionals in recognized occupations and in new and emerging occupations, but excluding any program to prepare individuals

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18 / See supra, note 13.

19 / See §641(a)(4) the Education Amendments of 1974, Pub. L. 92-380, 88 Stat. 607 (1974).

> for employment in occupations which the Commissioner determines, and specifies by regulation, to be generally considered professional which requires a baccalaureate or higher degree; such term includes guidance and counseling (either individually or through group instruction) in connection with such training or for the purpose of facilitating occupational choices; instruction related to the occupation or occupations to which the students are in training or instruction necessary for students to benefit from such training; the training of persons engaged as, or preparing to become, instructors in a vocational training program; travel of students and vocational training personnel while engaged in a training program; and the acquisition, maintenance, and repair of instructional supplies, aids, and equipment, but such term does not include the construction, acquisition, or initial equipment of buildings or the acquisition or rental of land.

The implications of this definition for contracting for the "provision of vocational training through arrangements with private vocational training institutions" (emphasis added) are unclear. Congress appears to have enacted this definition in the context of other amendments providing for a bilingual vocational training program.[20] However, the issue of the extent to which this definition may have impacted on the statutory provision for contracting with private vocational training institutions will soon be moot. Congress did not include this definition in the revised Vocational Education

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20 / See Senate Conference Report No. 93-1206, 3 U.S. Code Cong. and Adm. News, 4270, (1974).

Act enacted as part of the Education Amendments of 1976.

The Education Amendments of 1974 also appear to raise another issue concerning the definition of a "private vocational training institution." Recall that the statute defines a "private vocational training institution", in part, as a

> business or trade school, or technical institution, or other technical or vocational school . . . which (A) admits as regular students only persons who have completed or left elementary or secondary education . . . (B) is legally authorized to provide, and provides, . . . a program of postsecondary vocational or technical education . . . (§122(a)(7) of the Act (20 U.S.C. 1262(a)(7) 21/

Thus, based on the above definition, it appears that "private vocational training institutions" are postsecondary educational institutions. However, in the Education Amendments of 1974, Congress defined the term "postsecondary educational institution" in terms of non-profit status, i.e.,

> a nonprofit institution legally authorized to provide postsecondary education within a State for persons sixteen years of age or older, who have graduated from or left elementary or secondary school. 22/

21/ See supra, note 1 concerning the redesignation of this provision.

22/ See §841(a)(4) of Pub. L. 93-380, 88 Stat. 607, amending §108 of the Vocational Education Act by adding this definition as §108(15) of the Act (20 U.S.C. 1248(15)). After October 1, 1977, the effective date of the revised Vocational Education Act, this definition will be designated as §195(12) of the Act.

While the statutory definition of "private vocational training institution" did not require that such institutions be non-profit, it is unclear whether the subsequently enacted definition of "postsecondary educational institution" would be construed to mean that contracting with "private vocational training institutions" would be limited to non-profit institutions. The 1975 Vocational Education regulations do not reflect such an interpretation.

E. The 1975 Vocational Education Regulations

In 1975 the Office of Education revised its regulations for state vocational education programs. The section of the regulations governing vocational education under contract was amended by replacing the phrase "public and non-public agencies and institutions" with the phrase "private vocational training institutions". (§102.5(a), 40 F.R. 8082, (February 25, 1975)). The remaining portions of the regulations governing vocational education under contract essentially repeated the language of the 1970 regulations.

However, the relevant comment preceding the text of the regulations published in the Federal Register stated that, "The general contracting provision in §102.5 is changed in order to be consistent with the Act. However, contracting is

not limited to "private vocational training institutions" and may include public or non-public agencies or institutions" (40 F.R. 8077, February 25, 1975). Such comments are intended to help explain the meaning of regulations. Thus, it appears that the Office of Education intended, in part, to continue to authorize vocational instruction under contract with "public and non-public agencies or institutions". Yet the phrase does not appear in the actual regulations and such comments are not published in the Code of Federal Regulations. As previously indicated, it is unclear whether Congress intended to authorize contracting for vocational training with such a broad category of institutions, i.e., "public and non-public agencies and institutions."[23/]

F. The Education Amendments of 1976

During the course of our research, Congress enacted

23/ The citation to legal authority for §102.5 of the 1975 regulations refers to 20 U.S.C. 1248(1) and 20 U.S.C. 1262 (2)(7). Thus, it appears that the Office of Education used both §§108(1) and 122(a)(7) as authority for this section of the regulations. As indicated, supra, note 13, it is unclear whether §108(1), i.e., the definition of "vocational education," was intended to provide independent authority for contracting with "public and non-public agencies and institutions."

the Education Amendments of 1976[24] and, among other things, substantially revised the Vocational Education Act. With the exception of certain sections not relevant here, the effective date of the revised Vocational Education Act is October 1, 1977.[25]

In the process of revising the Act, Congress, apparently through oversight, neither continued the statutory authorization for contracting with "private vocational training institutions" nor defined the term. However, the report of the Senate Committee on Labor and Public Welfare indicated that the state plan "should give careful consideration to the most effective means of utilizing all existing institutions capable of carrying out vocational programs."[26] The Committee defined "all existing institutions" to mean

> institutions such as public and private community and junior colleges, four-year colleges and their branches, proprietary schools, manpower skill centers, and technical institutes, which may not have traditionally been deeply involved in vocational education as well as the more traditional secondary school or area vocational school. In addition, by listing such institutions, the Committee does not mean to exclude nontraditional educational settings, such as employer-based sites

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24 / Pub. L. 94-482, 90 Stat. 9081 (1976).

25 / See §204(a)(2) of Pub. L. 94-482, 90 Stat. 2081 (1976).

26 / S. Rep. No. 94-882, 5 U.S. Code Cong. and Adm. News, (1976), p. 5205.

> or "classrooms without walls." The Committee would encourage States, in assessing available facilities, to examine as wide as possible a range of facilities which might be useful in providing high quality vocational education [Emphasis added.] 27/

Thus, although the statute was silent about vocational instruction under contract, the legislative history indicated that Congress was interested in involving a wide range of training institutions, including "proprietary schools", in the delivery of vocational education services.

G. The Proposed 1977 Vocational Education Regulations

The Office of Education issued proposed regulations to implement the revised Vocational Education Act on April 7, 1977. Despite the absence of express statutory authority for contracting with "private vocational training institutions", the proposed regulations included a section governing vocational instruction under contract. The proposed regulations indicated that contracting was authorized with both "private vocational training institutions or other existing institutions capable of carrying out vocational programs." However, these terms were not defined in the proposed regulations. Specifically, the proposed regulations stated, in part, that

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27 / Id.

> (a) A State may make provision for any portion of the program of instruction on an individual or group basis by private vocational training institutions or other existing institutions capable of carrying out vocational programs through a written contract with the State board or local educational agency. (§104.514(a), 42 F.R. 18565, April 7, 1977) [Emphasis added.] 28 /

In addition, the proposed regulations also required that the contract "describe the portion of instruction to be provided by the institution and incorporate the standards and requirements of vocational education set forth in the regulations in this subpart and the approved five-year State plan" (§104.514, 42 F.R. 18565, April 7, 1977).

The proposed regulations are also imposed conditions on the exercise of this contracting authority which were similar to those in previous regulations

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28 / The citation to the legal authority for §104.514 of the proposed regulations indicates that §104.514 implements Sec. 120(b)(1)(A)(20 U.S.C. 2330) and Sen. Rpt. 94-482, p. 67. Sec. 120(b)(1)(A) states that "(b)(1) Grants to States under this subpart may be used . . . for the following purposes: "(A) vocational education programs". See supra, p. 27 for the text of p. 67, Sen. Rpt. 94-882. Thus, it appears that in the absence of express statutory authority for contracting with "private vocational training institutions" or with other institutions, the Office of Education relied heavily on a broad interpretation of language in the legislative history as authority for promulgating a proposed regulation that would grant authority for contracting for vocational instruction.

(b) The contract for instruction shall be entered into only upon a determination by the State board or local educational agency that:
(1) The contract is in accordance with State and local law; and
(2) The instruction to be provided under contract will be conducted as a part of the vocational education program of the State and will constitute a reasonable and prudent use of funds available under the approved five-year State plan.
(c) The State board or local educational agency shall review the contracts with the institutions at least once a year. (§104.514(b) and (c), 42 F.R. 18565, April 7, 1977).

H. The Vocational Education Technical Amendments

Following the issuance of the Office of Education's proposed regulations, Congress enacted the Vocational Education Technical Amendments.[29] As part of these technical amendments, Congress included the previous authority for contracting with "private vocational training institutions"[30] and the

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29 / Pub. L. 95-40 (1977).

30 / Pursuant to the revised Vocational Education Act and the technical amendments, the authority to contract with "private vocational training institutions" has been redesignated as §120(b)(1)(N) of the Vocational Education Act of 1963, as amended (20 U.S.C. 2330 (b)(1)(N)). The effective date of this redesignated provision is October 1, 1977.

definition of "private vocational training institution"[31] that had not been carried over to the revised Vocational Education Act when Congress passed the Education Amendments of 1976. Thus, the same authority and definition that were enacted in the Vocational Education Amendments of 1968 are now contained in the revised Vocational Education Act.

I. The Final 1977 Vocational Education Regulations

At the time this study was completed (June, 1977) the final Vocational Education regulations had not been issued by the Office of Education. It is unclear what impact the technical amendments will have on the section of the proposed regulations governing vocational instruction under contract. (§104.514, 42 F.R. 18565, April 7, 1977). The principal issue is whether the reenactment of (a) the authority to contract with "private vocational training institutions" and (b) the definition of "private vocational training institution" will cause the Office of Education to change the

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[31] Pursuant to the revised Vocational Education Act and the technical amendments, the definition of "private vocational training institution" has been redesignated as §195(21) of the Act (20 U.S.C. 2461(21)). The effective date of this redesignated provision is October 1, 1977.

language of the section of the proposed regulations governing vocational instruction under contract.

If the Office of Education construes the authority and the definition narrowly, 32/ then it is possible that the final regulations will only authorize contracting with "private vocational institutions", as defined. If this were the case, then it would appear, assuming appropriate authority under state law, that states would only be authorized to use federal vocational education funds to contract with "private vocational training institutions" meeting the statutory definition. Assuming appropriate authority under state law, state vocational education funds could be used to contract with other private vocational training sources that met state requirements, but did not meet the federal definition.

However, if the Office of Education reads the authority and the definition together with the broad language of the legislative history of the Education Amendments of

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32/ We note that the language of §108(1), the definition of "vocational education", which the Office of Education apparently relied on in the 1970 and 1975 regulations as authority to contract with "public and non-public agencies and institutions", does not appear in the amended definition of "vocational education" enacted in the Education Amendments of 1976. (See §195(1) of the revised Act (20 U.S.C. 2461(1)) for the amended definition of "vocational education ").

1976,[33] then it is possible that the final regulations will contain an OE interpretation that contracting with both "private vocational training institutions" and "other existing institutions capable of carrying out vocational programs" is authorized.

The Office of Education's choice of interpretations will be reflected in the section of the final regulations governing vocational instruction under contract.

III. Overview of the State Legal Framework for Contracting With Private Vocational Training Sources

A. Introduction

As an introduction to the overview of the state legal framework for contracting with private vocational training sources, we present a general discussion of certain legal issues related to the authority of state boards of education and the governing boards of LEAs to enter into such contracts.

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33 / See supra, pp. 27-28 for the relevant language of the report of the Senate Committee on Labor and Public Welfare which the Office of Education relied upon as authority for the section of the proposed regulations governing vocational instruction under contract.

This discussion is necessary because our research revealed that, while some state statutes expressly authorize either State Boards and/or LEAs to contract with private vocational training sources, many are silent on the point. In the latter case, many state statutes related to the powers of State Boards or LEAs contain broad general authority which, if read in proper context, could arguably be construed to provide implied authority to enter into such contracts. However, the absence of express state statutory authority to enter into such contracts also poses a related issue, i.e., the extent to which public boards of education can, in the absence of express statutory authority, delegate authority through contracts with private vocational training organizations.

Thus, we will briefly analyze (1) the general authority of state boards of education and governing boards of LEAs; (2) the authority of public boards of education to contract; (3) the concepts of delegation and subdelegation; and (4) the issue of delegation to private organizations.

The purpose of this general analysis is twofold. First, it provides an overview of a range of judicial decisions pertaining to issues related to public boards of education contracting with private organizations for instructional services. Second, it serves as a general aid to understanding some of the legal

reasoning involved in analyzing and categorizing state statutes and regulations to determine whether they could be construed to authorize or prohibit contracting with private vocational training sources.

Following this analysis, we describe the different categories of state legal frameworks that emerged from our research.[34] Included in each category is a short discussion of the reasons for establishing the category and placing particular states or outlying areas in it.

1. The General Authority of State Boards of Education and the Governing Boards of LEAs

The general authority of state boards of education and of governing boards of LEAs vary from state to state. However, for purposes of this discussion, state boards of education and

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34 / These categories are: (1) both the State Board and LEAs appear to have authority to contract with private vocational training sources; (2) neither the State Board nor the LEAs appear to have authority to contract with private vocational training sources; (3) the State Board appears to have authority to contract with private vocational training sources, but it does not appear that LEAs do; (4) it is unclear whether the State Board or LEAs have authority to contract with private vocational training sources; (5) the State Board appears to have authority to contract with private vocational training sources, but it is unclear whether LEAs do; (6) it is unclear whether the State Board has authority to contract with private vocational training sources, but it appears that LEAs do not.

the governing boards of LEAs generally share several characteristics and are generally governed by certain broad legal principles common to both.

State Boards of Education are usually established by the provisions of a statute or state constitution. When established by a statute, the state legislature defines the powers and duties of the board. When established by a state constitution, the board is still subject to the state legislature. Similarly, school districts and their governing boards may be created by the state legislature or the state constitution.

As creatures of the state, State Boards of Education and the governing boards of LEAs have only such powers as may be conferred by state statute or the state constitution. With respect to their statutory powers, these boards may have very broad or very limited powers depending on the breadth of legislative authorization. In general, such boards only have those powers which are expressly conferred by statute or are necessarily implied from those powers conferred by statute.[35/]

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35 / See, e.g., City of Oakland v. Oakland Unified School District of Alameda County, 291 P.2d 1001, 138 C.A. 2d 406 (1956); Slippery Rock Area Joint School System v. Franklin Tp. School Dist., 133 A. 2d 848, 389 Pa. 435 (1957); Murray v. Egan, 256 A. 2d 844, 28 Conn. Sup. 246 (1969); Ashley v. Rye School Dist., 274 A. 2d 795, 111 N.H. 54 (1971); Kellam v. School Bd. of City of Norfolk, 117 S.E. 2d 96, 202 Va. 252 (1960); Buttolph v. Osborn, 119 A. 2d 686, 119 Vt. 116 (1956).

For example, with respect to the powers of a school board, one state court has said that

> The school board has and can exercise those powers that are granted in express words; those fairly implied in or necessarily incidental to the powers expressly granted, and those essential to the declared objects and purposes of the corporation 36 /

In referring to the implied powers of a school district, another state court has said that

> The only implied powers which can be conceded to a school district are those such as are reasonably necessary to exercise power expressly granted. 37 /

In general, when issues arise concerning the authority of a public board of education to perform a particular act, courts will first consider whether the legislature has expressly authorized the board to perform the act. If there is no such express statutory authority, courts generally ascertain whether or not the board has implied authority to perform the act. The extent to which a court may find implied authority may vary from state to state, depending on any number

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36 / Board of Education of Oklahoma City v. Cloudman, 92 P. 2d 837, 841, 185 Okl. 400 (1939).

37 / Olmstead v. Carter, 200 P. 134, 34 Idaho 276 (1921).

of factors, e.g., whether implied authority is reasonably necessary to exercise express authority;[38/] legislative intent; relevant precedent; judicial inclination to construe statutes narrowly or broadly; the particular fact situation before the court, etc. However, absent a finding of either express or implied authority, courts will find that the public board of education was not authorized to perform the act.

2. The Authority of Public Boards of Education to Contract

The authority of public boards of education to contract varies from state to state. Subject to the general rule that public boards of education have only such powers as statutes confer expressly or by necessary implication, such bodies may make contracts. It has been said, for example, that "a school district has only such power and authority as is granted by the legislature and its power to contract . . . is only such as i

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38/ The extent to which state courts would accept an argument of implied authority based on necessity may vary from state to state. However, the language of §122(a)(7) of the Vocational Education Act (20 U.S.C. 1262(a)(7)) suggests three elements which could be incorporated into an argument of implied authority based on necessity, i.e., contracts with private vocational training institutions "can make a significant contribution to attaining the objectives of the State plan, and can provide substantially equivalent training at a lesser cost, or can provide equipment or services not available in public institutions."

conferred either expressly or by necessary implication."[39]

Contracts which are within the scope of authority of a public board of education and which have been entered into in accordance with all legal requirements as to mode and procedure of contracting, are valid and binding upon the board.[40]

In addition, as a general rule of contract law, any valid contract must meet several criteria. First, there must be mutual assent of the contracting parties. Second, the parties must have the legal capacity to contract. Third, there must be adequate consideration. Fourth, the terms of the contract must be definite. Fifth, the subject matter of the contract must be lawful.

Even if a public board of education has authority to contract, contracts must be within the scope of the board's authority. If a board of education were expressly authorized to contract with a private vocational training source, then a contract which met all necessary legal requirements would be within the scope of its authority. However, if authority to enter into such contracts were not expressly conferred, then

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39/ Wichita Public School Employees, Local 513 v. Smith, 397 P. 2d 357 (Kan. 1964).

40/ Lynch v. Webb City School Dist. No. 92, 418 S.W. 2d 608 (Mo. 1967); Hamilton v. Oakland School District, 26 P. 2d 296 (Cal. 1933). Bansack and Pearce v. School District of Marceline, 49 S.W. 2d 1085 (Mo. 1932).

the extent to which a board may have implied authority would have to be analyzed. In addition, contracts with private vocational training sources may, in the absence of express statutory authority, raise delegation issues, i.e., legal questions about the extent to which public boards of education can delegate authority through contracts with private vocational training sources when such contracting is not expressly authorized. Thus, the following sections consider the concepts of delegation and subdelegation and the related issue of delegation by public bodies to private organizations.

3. The Concepts of Delegation and Subdelegation

The use of the terms "delegation" and "subdelegation" is often confused. Delegation generally refers to the transfer of legislative power by a legislative body to another body, agency, official or jurisdiction.[41] Subdelegation, on the other hand, generally means the transmission of authority from governing boards of heads of administrative agencies to subordinates.[42]

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41 / See generally, Davis, Administrative Law Treatise, §2.01 et. seq. (1958).

42 / Id. at §9.01 et. seq.

The distinction between delegation and subdelegation is often blurred in court opinions. Frequently both are referred to simply as "delegation". Courts also use the term "delegation" broadly to refer to the transfer of power or authority from a public body to a private organization.

The extent to which a governing body of a governmental entity can delegate or subdelegate authority is primarily a question of the intent of the legislative body creating the entity. Delegation or subdelegation specifically authorized by the legislature, generally will be upheld if the standards for such delegation or subdelegation are met. 43 /

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43 / The generally accepted federal rule is that Congress can delegate its legislative power to administrative agencies if accompanied by intelligible standards. See, e.g., National Cable Association v. U.S., 415 U.S. 336, 342 (1974); U.S. v. Chicago, Mil. St. P. §P. R.R., 282, U.S. 311 (1930). Since two 1935 decisions (Panama Refining Co. v. Ryan, 293 U.S. 388 and Schechter Poultry Corp. v. United States, 295 U.S. 495) the Supreme Court has not invalidated Congressional delegations to administrative agencies. See generally Davis, Administrative Law Treatise, §2.00-1 et. seq. (1970 Supp.) Professor Davis finds that the tendency of the United States Supreme Court is no longer to insist on meaningful standards in Congressional legislation. He believes that courts are becoming more concerned about general safeguards against abuse of delegated power rather than automatically requiring standards. Id. at §2.00-5. However, Davis also observes that: "Unlike the Supreme Court of the United States, which has struck down only two Congressional delegations to governmental authorities, the state courts have struck down a large number of legislative delegations." Id. §2.06.

Many of the modern cases pertaining to delegation and subdelegation have arisen because the legislation creating the governmental entity was silent about delegation or subdelegation. In the absence of express legislative authority, the courts have attempted to fashion legal standards for determining the extent to which delegation and subdelegation is permissible. In general, federal courts are more liberal in permitting subdelegation than state courts. Federal courts typically presume Congress intended to permit subdelegation within certain limits unless it expressed a contrary intent or sensitive constitutional issues are at stake. 44 /

State courts are generally less liberal than federal courts in permitting subdelegation in the absence of express statutory authority. Since the primary focus of this section

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44 / For federal court decisions upholding subdelegation in the absence of express legislative authority, see, e.g., Fleming v. Mohawk Wrecking § Lumber Co., 331 U.S. 111 (1947); Equal Employ. Op. Com'n v. Raymond Metal Prod. Co., 305 F. Supp. 907 (D. Md. 1974). Wirtz v. Atlantic States Construction Co., 357 F. 2d 442 (5th Cir. 1966); N.L.R.B. v. Barnes Corp., 178 Fed 156 (1949); Evans v. I.T.U., 76 F. Supp. 895 (S. D. N.Y. 1948). See generally, Subdelegation by Federal Administrative Agencies, 12. Stan. L. Rev. 808 (1960). Contrast Cudahy Packing Co. v. Holland, 315 U.S. 357 (1942), but see dissent of Justice Douglas at 368, now the modern view. For an exception to the modern trend in federal courts, see U.S. v. Giordano, 416 U.S. 505 (1974) where subdelegation was not upheld because of the sensitive constitutional issues involved in wiretapping authorizations.

of the analysis is the extent to which state courts have upheld subdelegation in the absence of express statutory authority, we will consider the different approaches state courts have taken to this issue.

In cases involving governmental entities other than boards of education, some state courts have adopted or are moving in the direction of the more liberal federal approach.[45] Many, however, continue to apply the traditional rule that only ministerial functions can be subdelegated; discretionary authority cannot.[46]

In theory, ministerial duties are administrative duties which do not require independent judgment; discretionary duties involve the exercise of judgment. However, the

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45 / In the absence of express statutory authority for subdelegation, such courts are more likely to consider such issues as the degree of subdelegation, the necessity for subdelegation, the interests served by and affected by subdelegation and safeguards against arbitrary action. See, e.g., State v. Imperatore, 92 N.J. Super. 347, 233 A. 2d 498, 500-501 (1966), cert. den'd. 48 N.J. 442, 226 A. 2d 431 (1967); McGovern v. Patterson, 273 App. Div. 35, 75 N.Y.S. 2d 492 (1948), aff'd 298 N.Y. 530, 80 N.E. 2d 667 (1948); Conroy v. City of Battle Creek, 314 Mich. 210, 22 N.W. 2d 275 (1946); Kiernan v. Brostein, 73 Misc. 2d 629, 342 N.Y.S. 2d 977 (1973); Poporis v. City of Warson Woods, 352 S.W. 2d 605 (Mo. Sup. Ct. 1962); Northern Boiler Co. v. David 106 N.E. 2d 620 (Ohio Sup. Ct. 1952).

46 / See, e.g., Levine v. Perry, 49 S.E. 2d 820, 204 Ga. 323 (1948); People ex rel Bray v. Golder, 83 N.Y.S. 2d 186 (1948).

ministerial-discretionary distinction is elusive because most ministerial duties involve some discretion. A noted commentator has observed the problems this elusive distinction creates in the context of a delegation of authority by a superior to a subordinate.

> What happens in fact is that the line between exercise of independent judgment by the superior and reliance by the superior on the judgment of the subordinate becomes impossible to locate. 47 /

In cases involving subdelegation by school boards, many state courts have applied this ministerial-discretionary distinction and, absent express statutory authority, have invalidated the subdelegation. 48 / Other than invoking this traditional distinction, such courts have not developed a consistent set of principles to apply to subdelegation issues. Indeed, the application of the ministerial-discretionary distinction sometimes produces inconsistent results. Consequently, it is often difficult to determine whether or not

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47 / Davis, Administrative Law Treatise, §9.06 (1958).

48 / Big Sandy School District No. 100 v. Carrol, 433 P. 2d 235 (Colo. Sup. Ct. 1967) (making a contract with a teacher is discretionary and cannot be subdelegated); Elder v. Board of Education of School District No. 127 1/2, 208 N.E. 2d. 423 (Ill. App. Ct. 1965)(power to employ teachers discretionary and cannot be delegated); Board of Education of Marshall Cty. v. Baugh, 199 So. 822 (Ala. Sup. Ct. 1941)(dismissal of teachers requires the exercise of discretion and cannot be subdelegated); Steele v. Board of Trustees of Pittsburgh Public Schools, 9 P. 2d 217 (Col. Ct. of App. 1932) (serving a notice of dismissal is ministerial).

a court will find an invalid subdelegation.

Two recent decisions by the Supreme Court of Washington illustrate the different results produced when the same court applies the ministerial-discretionary distinction to boards of education. In the first case, Noe v. Edmonds School District No. 15 of Snohomish Cty.,[49] the court held that a board of education could not subdelegate discretion to the superintendent to place a teacher on probation for infraction of a board rule prohibiting corporal punishment. The court found that placing a teacher on probation was a discretionary decision which the board was to make itself and was not a ministerial decision which could be subdelegated.

A year later the same court ignored its decision in Noe and, in Pierce v. Lake Stevens School District No. 4, Snohomish Cty.,[50] upheld a subdelegation of authority to principals and other staff to determine which teachers would be laid off because of a financial crisis. Although the board exercised no personal judgment concerning individual teachers,[51] the court found that the board had formally approved these decisions and that the legislature did not intend that the board "should perform the functions of

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49/ 515 P. 2d 977 (1973).

50/ 529 P. 2d 810 (1974).

51/ Excerpts from record quoted in brief of appellants in the Washington Court of Appeals at 35-36.

professionals."[52]

Pierce reflects a softening of the rigid traditional doctrine. An earlier decision of the Wisconsin Supreme Court also reflects this more practical state court approach to subdelegation issues. In School District No. 3 of Town of Adams v. Callahan,[53] the court found that even where an executive officer must exercise his own judgment and discretion in making an order, he is not precluded

> from utilizing, as a matter of practical administrative procedure, the aid of subordinates directed by him to investigate and report the facts and their recommendations in relation to the advisability of their order, and also to draft it in the first instance.[54]

Cases such as these suggest that some state courts are willing to consider the degree and the necessity for subdelegation rather than rigidly invoking the traditional ministerial discretionary doctrine. However, absent express statutory authority, it appears that state courts are reluctant to permit boards of education to completely subdelegate or surrender authority in a particular area. Yet, depending on

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52 / 529 P. 2d at 817.

53 / 297 N.W. 407 (Wisc. Sup. Ct. 1941)

54 / Id.

the degree of authority subdelegated or the necessity for the subdelegation, at least some state courts have upheld what is in fact subdelegation without express statutory authority.

In general, the different cases demonstrate that state courts have not developed a single uniform legal standard to apply to subdelegation issues that arise in the absence of express statutory authority for subdelegation. Many state courts have relied on the traditional ministerial-discretionary distinction. Yet Noe and Pierce illustrate the sometimes inconsistent application of this doctrine by the same court. Some state courts have taken a more practical approach by considering the degree of subdelegation and the necessity for subdelegation. Such courts have upheld what other state courts might consider to be invalid subdelegations. In short, absent case law research for a particular state, it is difficult to determine the precise degree of subdelegation that a state court would uphold absent express statutory authority.

4. Delegation by Public Bodies to Private Organizations

In general, case law concerning delegation to private parties is often inconsistent and confusing, appearing more closely aligned to the facts of a particular case than to clearcut judicial standards.

The Supreme Court has upheld legislative delegations to private organizations[55] while allowing cases which propounded the "doctrine of non-delegation" to fall into disuse.[56] Lower federal courts have upheld a statute which required approval by a hospital council of HEW regulations, noting the particular qualifications and interests of those private persons on the council as well as the retention of final control in the Secretary.[57] In the absence of express legislative authority, subdelegation by the Civil Service Commission to local voluntary agencies has also been upheld due to the issuance of standards and review by the Commission.[58] Similarly, the delegation of rule-making and disciplinary powers to the private National Association of Securities Dealers, subject to SEC approval and review, has been upheld.[59]

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55 / Parker v. Brown 317 U.S. 341 (1943); Sunshine Anthracite Coal Co. v. Adkins, 310 U.S. 381 (1940); U.S. v. Rock Royal Co-Op, 307 U.S. 533 (1939); Currin v. Wallace, 306 U.S. 1 (1936).

56 / Carter v. Carter Coal Co., 298 U.S. 238 (1936); Washington ex rel Seattle Trust v. Roberge, 278 U.S. 116 (1928). See also Schecter Poultry Corp. v. U.S., 295 U.S. 495 (1935).

57 / Corum v. Beth Israel Med. Ctr., 373 F. Supp. 550 (S.D.N.Y. 1974).

58 / United Black Fund v. Hampton, 352 F. Supp. 898 (D.D.C. 1972).

59 / R. H. Johnson & Co. v. SEC, 198 F. 2d 690 (2d. Cir. 1952), cert den'd 73 S. Ct. 94.

In summary, the modern trend in federal courts has clearly tended toward liberality in the area of delegation. Although clearcut standards have not evolved, courts which have upheld delegation have been concerned with one or more of the following factors: (1) the particular qualifications or interests of those delegated authority; (2) retention of final review authority in a public agency or officer; and (3) the issuance of standards to guide decision making by private parties.

In contrast to federal support of delegation to private parties, the state court decisions have been described as "unsteady and conflicting". 60 / Some state courts have not upheld legislative delegations to private organizations or parties because of the absence of standards or safeguards and problems of self-interest. 61 / In related cases involving

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60 / Davis, Administrative Law Treatise, §2.14.

61 / Group Health Ins. of N.J. v. Howell 193 A.2d 103 (N.J. Sup. Ct. 1963) supplemented 202 A. 2d 689 (1964) (delegation of approval for medical service to private medical societies); N.J. Dept. of Transportation v. Brzoska, 354 A. 2d 650 (N.J. App. 1976) (airport owner determination of aviation licenses); Bayside Timber Co. v. Bd. of Supervisors, 97 Cal. Rptr. 431 (Cal. App. 1971) (formulation of timber rules and regulations by timber interests); Fink v. Cole, 97 N.E. 2d 873 (N.Y. App. 1951) (jockeys licensed by a private Jockey Club); Abelsons, Inc. v. N.J. State Board of Opticians, 75 A. 2d 867 (N.J. Sup. Ct. 1950); Johnson v. Milk Marketing Board, 295 N.W. 346 (Mich. Sup. Ct. (1940).

legislative delegations to private groups, state courts have indicated that standards to guide the decision-making of private parties must be set out "as definitely as is reasonably practicable."[62] However, in some case usually involving an independent event[63] or the acknowledged high qualifications of the private parties,[64] no specific standards have been required. In other cases, standards may be explicit in the law or in administrative regulations,[65] or may be implied,[66] particularly from legislative policy.

62/ Wilson v. Conn. Prod. Develop. Corp., 355 A. 2d 72 (Conn. Sup. Ct. 1974) See also Kugler v. Yocum, 445 P. 2d 303 (Cal. Sup. Ct. 1968).

63/ See e.g., Aero Motors, Inc. v. Administrator, Motor Vehicle Admin., 337 A. 2d 685 (Md. App. 1975); Kugler v. Yocum, 445 P. 2d 303 (Cal. Sup. Ct. 1968); La. Motor Vehicle Comm. v. Wheeling Frenchman, 103 So. 2d 464 (La. Sup. Ct. 1958); Kansas Tob-Candy Distrib. v. McDonald, 519 P. 2d 1110 (Kan. Sup. Ct. 1974).

64/ See e.g., People v. Barksdale, 503 P. 2d 257 (Cal. Sup. Ct. 1972) (hospital accreditation by private committee); Register v. Milam, 188 So. 2d 785 (Fla. Sup. Ct. 1966)(selection of pilot apprentices by licensed pilots); Colo. Polytechnic College v. State Bd. of Comm. Colleges and Occup. Education, 476 P. 2d 38 (Colo. Sup. Ct. 1970)(college certification by private organization);City of Cleveland v. Lausche, 49 NE 2d 207 (Ohio App. 1943) (operation of municipal zoo by a non-profit organization);Floyd v. Thornton, 68 S.E. 2d 334 (S.C. Sup. Ct. 1951)(some state board of banking members appointed by bankers).

65/ See N.J. Dept. of Transportation v. Brzoska, 354 A. 2d 650 (N.J. App. 1976); Davis, Administrative Law,§2.

66/ Group Health Ins. of N.J. v. Howell, supra.

The retention of a power of review in a public agency or office is a primary safeguard which ensures control and accountability; this retention may even cause a court to find that no delegation has actually occurred. Moreover, review power has been implied by at least one state court, in order to provide the county board of supervisors with oversight authority for actions taken upon petition of a majority of taxpayers.[67] In a related area, another court has found that a legislature "may enact laws which will become operative upon the affirmative vote of the people of the district to be affected," since the ultimate decision remains with the legislature.[68]

The preceding discussion clearly demonstrates the absence of universal legal principles in cases primarily concerned with legislative delegation to private parties. However, in both federal and state court cases, one or more of the following criteria appear to have been the key to sustaining such delegations: (1) the special interest or unique qualifications of the private party; (2) adequate standards to guide the discretion of the private parties; (3) participation in decisions or retention of review authority

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67 / Ricca v. Bojorquez, 473 P.2d 812 (Ariz. App. 1970).

68 / Malito v. Marcin, 303 N.E. 2d 262 (Ill. App. 1973).

by a public agency or officer; and (4) clarity concerning the role of the private party in exercising delegated power.

With respect to delegation by public boards of education, our research did not reveal any state court decisions involving the precise question of whether, in the absence of express statutory authority, such boards could contract with private vocational training sources with federal vocational education funds. However, some state courts have considered what is perhaps an analogous situation, i.e., the extent to which public boards of education can enter into collective bargaining contracts with private organizations, such as teachers' unions, in the absence of express statutory authority.

Various state courts have resolved the issue differently. Some state courts have refused to permit collective bargaining without express statutory authority. One state court has concluded, in a collective bargaining case, that where

> the power to manage and control the affairs of the school district lies exclusively with the board of trustees, except where that power has been by specific legislation granted to someone else, the Board may not delegate that authority without specific legislative authorization 69 /

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69 / Board of Education v. Scottsdale Education Ass'n, 498 P. 2d 578, 585 (Arizona Court of Appeals) (1972).

Another state court has said, in ruling on a collective bargaining case, that

> Without specific legislative authorization, a school board has no authority, by contract or otherwise, to delegate to others the duties placed on the Board by the Constitution and laws . . .[70]

However, these decisions can be contrasted with decisions of normally restrictive state courts which have permitted a measure of discretion to be delegated through collective bargaining agreements in the absence of statutory authority.[71] These other courts have taken the position that no unlawful delegation of board discretion was involved because "authority is and remains in the board."[72] The board retained the "right of final decision as to what terms and conditions it would agree to" including the right not to agree[73] and judicial review was available to challenge

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70/ Chatham Ass'n of Ed., Teach. U. v. Board of Public Ed., 204 S.E. 2d 138, (Georgia) (1974).

71/ See e.g., Norwalk Teachers' Ass'n. v. Board of Educ., 138 Conn. 269, 83 A.2d 482 (1951); Illinois Education Ass'n. v. Board of Educ. of School Dist. No. 218, 23 Ill. App. 3d 649, 320 N.E. 2d 240 (1st Dist. 1974); Louisiana Teachers' Ass'n. v. Orleans Parish School Board, 303 So. 2d 554 (La. Ct. App. 1974); Elec. Workers v. Town of Farmington, 75 N.M. 393, 405 P. 2d 233 (1965); North Royalton Ed. Ass'n. v. North Royalton Bd. of Ed., 325 N.E. 2d 901 (Ohio App. Ct. (1974)).

72/ Norwalk Teachers Assoc. v. Board of Education, supra, 83 A. 2d at 482.

73/ Louisiana Teachers' Ass'n. v. Orleans Parish School Board, supra, 303 So. 2d at 567.

any alleged unlawful exercise of authority.[74]

These decisions have permitted collective bargaining agreements to limit board discretion by requiring that certain procedures be followed prior to the board making a decision on personnel matters[75] and by authorizing delegations to third party arbitrators in the event of disagreements.[76] While permitting such limitations, these state cases all take the position, however, that boards cannot delegate discretion concerning basic educational policy through collective bargaining.[77] Nevertheless, to accommodate the special interests of teachers in the terms and conditions of their employment, courts have increasingly come to view limitations

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74 / North Royalton Education Ass'n. v. North Royalton Bd. of Educ., supra, 325 N.E. 2d at 908.

75 / Classroom Teachers Association v. Bd. of Education, 15 Ill. App. 3d 224, 304 N.E. 2d 516 (3d Dist. 1973); Illinois Education Association v. Board of Education of School District No. 218, supra; contra Wesclin Education Association v. Board of Education, 30 Ill. App. 3d 67, 331 N.E. 2d 335 (5th Dist. 1975).

76 / See, e.g., North Royalton Education Ass'n. v. North Royalton Bd. of Ed., supra (binding arbitration of grievances); Board of Education v. Johnson, 21 Ill. App. 3d 482, 315 N.E. 2d 734 (1st Dist. 1974) (arbitration of "minor disputes" permitted); contra Lockport A. Sp. Ed. Coop v. Lockport A. Sp. Ed. Coop A., 33 Ill. App. 3d 789, 338 N.E. 2d 463 (3d Dist. 1975).

77 / See, e.g., North Royalton Education Ass'n. v. North Royalton Bd. of Ed., supra.

on school board discretion in these areas as not amounting to unlawful delegation.

For example, in states with collective bargaining legislation that ostensibly denies collective bargaining over basic educatioal policies, state courts have in fact interpreted phrases such as "terms and conditions" to permit bargaining over major issues of educational policy. Thus, state court decisions have found the mandatory scope of collective bargaining[78] to include the number of teachers hired and the functions of substitute teachers;[79] staff size;[80]

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78 / With respect to the relationship between the scope of collective bargaining and delegation doctrine, one commentator has observed that: "The issue of the scope of permissible subjects of collective bargaining. . . is more complex. It essentially is the issue of the old delegation doctrine -- a doctrine that is being repudiated and, I believe, properly so, in terms of its absolutist legal theory which could preclude all teacher collective bargaining in the absence of explicit legislative authorization. But the doctrine has an underlying core of validity in that it requires that those who have been selected by a given process and from a given constituency retain the power to make ultimate policy decisions and override decisions made by others. In terms of teacher collective bargaining there may be some subjects -- acutely sensitive and quantitatively, if not qualitatively, removed from wages and hours -- about which school boards cannot contractually bind themselves for an extended period of time." (Goldstein, "Book Commentary", 22 Buffalo L. Rev. 603 (1973)).

79 / Detroit Federation of Teachers Local 231, AFT, AFL-CIO v. Board of Ed. of School Dist. of City of Detroit, 50 Mich. App. 660, 213 N.W. 2d 829 (1973).

80 / Susquehanna Va. Cent. School Dist. at Conklin v. Susquehanna Val. Teachers Ass'n., 358 N.Y.S. 2d 235 (N.Y.A.D. 1974).

class size and teacher loads;[81] notice of termination and tenure;[82] the school calendar;[83] job related personal property damage; partial reimbursement for approved graduate courses; and arbitration of disputes regarding disciplinary action taken against tenured teachers.[84]

To the extent that the delegation issues in such cases are analogous to the issue of contracting with private vocational training sources in the absence of express statutory authority, these cases suggest that different state courts may decide such issues differently.

Thus, in the absence of case law research for each state, it is difficult to determine with certainty whether, absent express statutory authority, a state court in a particular state would find that an appropriate contract by a public board of education with a private vocational training source constituted an illegal delegation. The cases we have reviewed

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81/ West Hartford Education Assoc. v. Decourcy, 162 Conn. 566, 292 A. 2d 526 (1972).

82/ Board of Ed. Central School Dist., Harrison v. Harrison Ass'n. of Teachers, 306 N.Y.S. 2d 49 (N.Y.A.D. 1974).

83/ Joint School Dist. No. 8 v. Wisconsin Employment Relations Bd., 37 Wis. 2d 483 (1967).

84/ Board of Education of Union Free School District No. 3 v. Associated Teachers of Huntington, Inc., 30 N.Y. 2d 122, 282 N.E. 2d 109, 331 N.Y.S. 2d 17 (1972).

suggest that, if confronted with the issue some state courts would not uphold such a contract. However, in some states there appears to be some precedent to support an argument that an appropriate contract could be upheld.

As a practical matter, it may be also useful to consider whether such a contract would be the subject of litigation. Although it is possible that teachers or a teachers organization might challenge such a contract, the previous experience of dozens of school districts with "performance contracting" apparently produced little, if any, litigation. The performance contracting experiments involved millions of dollars of federal funds for contracts by local school districts with private education companies.[85] Concern was expressed about the legality of performance contracting, absent express statutory authority,[86] but apparently there was no wave of state legislative activity to address this issue. Instead, it appears that participants in the performance contracting experiments sought to rationalize their involvement within the constraints of existing law. Perhaps the most revealing indication of this is contained in a letter from the state commissioner of education in Texas,

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85 / See R. Martin and C. Blacshke, "Contracting for Education Reform," Phi Delta Kappan, March 1971, pp. 408-406.

86 / See R. Martin "Performance Contracting: Making It Legal", Nation's Schools, January 1971, pp. 62-64.

which had four performance contracts under way, to the attorney general of that state. The question the Commissioner posed in seeking an opinion was

> May a school district enter into performance contracts with private corporations where such a program is primarily proposed for a study in depth of the utilization of the capability of the private sector as one strategy to facilitate desirable educational reforms, as distinguished from any general plan or movement to contract to private corporations the education of regular public school children? 87 /

In Opinion No. M-666, August 28, 1970, the attorney general answered the question in the affirmative. 88 /

B. Overview of the State Legal Framework for Contracting With Private Vocational Training Sources

In the absence of case law research for each state, the previous general analysis has guided our interpretation of state statutes to determine whether they could be construed to authorize or prohibit contracts with private vocational

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87 / Letter dated July 28, 1970 from Commissioner J. W. Edgar to Attorney General Crawford C. Martin, quoted in R. Martin and C. Blaschke, "Contracting for Educational Reform", supra.

88 / "Contracting for Educational Reform", supra. at 404.

training sources. Our review and analysis of state statutes and regulations and Fiscal Year 1977 State Plans for Vocational Education has produced a mixed picture of the extent to which such legal provisions could be construed to authorize or prohibit such contracting.

In general, we found that the various state legal frameworks for contracting with private vocational training sources can be divided into six categories which are related to authority under state law to contract with private vocational training sources. These categories are: (1) both the State Board and LEAs appear to have authority to contract with private vocational training sources; (2) neither the State Board nor LEAs appear to have authority to contract with private vocational training sources; (3) the State Board appears to have authority to contract with private vocational training sources, but it does not appear that LEAs do; (4) it is unclear whether the State Board or LEAs have authority to contract with private vocational training sources; (5) the State Board appears to have authority to contract with private vocational training sources, but it is unclear whether LEAs do; (6) it is unclear whether the State Board has authority to contract with private vocational training sources,

but it appears that LEAs do not. Set forth below are each of the categories which contain the names of states or outlying areas in the category and a brief discussion of the general analytic considerations which resulted in states and outlying areas being placed in the category.[89] The decision to place a state or outlying area in a particular category necessarily involved legal judgments about whether statutes could be construed to authorize or prohibit contracting with private vocational training sources. As previously indicated,[90] an analysis of relevant case law for a particular state or outlying area could result in that state or outlying area being placed in a different category.[91]

89/ The legal profiles for each state and outlying area are contained in Appendix A.

90/ See supra, p. 7.

91/ These categories are not entirely congruent with the perceptions of some state education administrators about authority under state law to contract with private vocational training sources. This point can best be illustrated by comparing the results of this study with the results of a recent Office of Education survey on the same subject. In January, 1977 OE surveyed the fifty states and outlying areas about their ability to contract with private vocational training sources. The survey instrument requested an answer to the following question(s): "In your state, is it possible under existing statutes, regulations, rules or other legal stipulations for the State Education Agency [and/or for the Local Education Agency] to contract with a non-profit private or proprietary school for instructional services with formula grant funds from Part B of the Vocational Education Act, as amended?" The response categories [footnote continues]

[footnote continued from previous page]

consisted of simple yes or no answer. No legal citations or related documentation were required to substantiate the responses given. When the OE survey results are compared with the results of this report, a number of discrepancies occur. In most cases, where the results of this report differ from the OE results, the difference can be explained by the fact that this report contains categories which indicate that the authority of either the SEA or LEA to contract with private vocational training sources is unclear. However, there are a number of states where our findings directly contradict responses to the OE survey. For example, the survey respondent from Wisconsin told OE that LEAs have authority to enter into such contracts, but the State Board does not. Our request for information from Wisconsin produced an attorney general's opinion which clearly indicates that local boards may contract only with public institutions. With respect to the authority of the State Board, we concluded it is unclear whether state statutes authorize the state board to enter into such contracts. However, the FY 77 State Plan for Wisconsin provides that the State Board (and only the State Board) may enter into such contracts.

To give another example, the survey respondent from South Carolina indicated that both the State Board and LEAs may enter into such contracts. Yet our research indicates that state statutes do not appear to authorize either the State Board or LEAs to contract with private institutions. Furthermore, the FY 77 State Plan for South Carolina indicates that the lack of statutory authority prohibits the state board from such contracting. In addition, Article XI, §4 of the S.C. Constitution prohibits public funds from being paid to private educational institutions.

We can only conclude that some of the responses to the OE survey were based on administrative perceptions of legal authority and not on an analysis of statutory authority.

1. Both the State Board and LEAs Appear to Have Authority to Contract with Private Vocational Training Sources

The states and outlying areas included in this category are: (1) Arizona, (2) California, (3) Colorado, (4) Illinois, (5) Iowa, (6) Kansas, (7) Michigan, (8) North Dakota, (9) Ohio, (10) Pennsylvania, (11) Puerto Rico, (12) Texas, (13) Virgin Islands, (14) Washington, and (15) Wyoming.

The reasons for placing these states in this category varied. Several states have statutes which expressly authorize the State Board and LEAs to contract with private vocational training sources. Other states in this category have broadly phrased statutory language which could arguably be construed to authorize such contracting. For example, one state board of education is charged with "the duty and responsibility of cooperating with [the Office of Education] in the administration" of the Vocational Education Act. The Board "is given all powers necessary to such cooperation" and may take "any action consistent with state law" to comply with the provisions of the Vocational Education Act. Furthermore state regulations expressly authorize contracts with private vocational training sources and the FY 77 State Plan provides that the State Board and LEAs may enter into such contracts. In such situations,

we have concluded that, although state statutes do not expressly authorize contracts with private vocational training sources, it appears that both the State Board and LEAs may enter into such contracts.

2. Neither the State Board Nor LEAs Appear to Have Authority to Contract With Private Vocational Training Sources

The states in this category are: (1) District of Columbia, (2) Georgia, (3) Kentucky, (4) Mississippi, (5) Nebraska, (6) New Jersey, and (7) South Carolina.

It should be noted that state statutes in these states do not expressly prohibit contracting with private vocational training sources per se. The rationale for not permitting such contracting varies from state to state. For example, in Georgia the relevant section of the FY 1977 State Plan indicates that contracts with private institutions are not permissible under Georgia law, as indicated by the opinion of the attorney general. The Kentucky State Plan refers to a provision in the state constitution, as interpreted by the attorney general, as the reason why such contracting is not authorized. The Mississippi and Nebraska State Plans both indicate that their state constitutions prevent such contracting. And, the South Carolina State Plan indicates that the lack of authorizing legislation prohibits the state board from such contracting.

3. The State Board Appears to Have Authority to Contract With Private Vocational Training Sources, But It Does Not Appear that the LEAs Do

The states in this category include: (1) Alaska, (2) Delaware, (3) Hawaii, (4) Idaho, (5) Louisiana, (6) Montana, (7) New Mexico, and (8) Tennessee.

The reasons for placing states in this category differed from state to state. Some state statutes indicate that the State Board is expressly authorized to contract with private vocational training sources. For example, one state statute provides that "the State Board may delegate to the vocational division its administrative functions relating to vocational education" and "subject to the policies of the state board, the vocational education division shall make agreements with public and private agencies to establish or to maintain a vocational education program . . ." Furthermore, the FY 77 State Plan for this state provides that the State Board may enter into contracts with private vocational training sources.

Other state statutes do not provide express authority to enter into such contracts. However, in these states, it appears that the general statutory authority of the State Board may provide implied authority for such contracting.

With respect to the authority of LEAs in these states to enter into such contracts, it does not appear that state statutes provide either express or implied authority for LEAs to contract with private vocational training sources. In addition, none of the FY 77 State Plans for these states indicate that LEAs may enter into such contracts. Consequently, we have placed these states in a category which indicates that the State Board appears to have authority to contract with private vocational training sources, but LEAs do not.

4. It Is Unclear Whether the State Board or LEAs Have Authority to Contract With Private Vocational Training Sources

The states and outlying areas in this category include: (1) American Samoa, (2) Guam, (3) Indiana, (4) Massachusetts, (5) Missouri, (6) New Hampshire, (7) Oregon, (8) South Dakota, and (9) Trust Territory of the Pacific.

Different states were placed in this category for different reasons. In some states, state statutes did not appear to provide either express or implied authority for either the State Board or LEAs to contract with private vocational training sources. Yet, in such states, the FY 77 State Plan indicates that the State Board and/or LEAs could enter into such contracts. Although such states appear to lack the necessary authority, the content of the FY 77 State Plan represents an assertion that such contracting is authorized.

Consequently, we have placed such states in a category which indicates that it is unclear whether either the State Board or LEAs have authority to contract with private vocational training sources.

In another state, the State Board is given "all power necessary" to cooperate with the Office of Education in the administration of the Vocational Education Act. The FY 77 State Plan indicates that there is no state statutory authority for vocational education under contract and cites an opinion of the state attorney general to that effect. We were subsequently informed that this opinion has been withdrawn, but has not been replaced by another. Given this apparent uncertainty, we have placed this state in this category.

In yet another state, state statutes expressly authorize the State Board and LEAs to contract with private vocational training sources. The state supreme court, in ruling on another state statute authorizing the loan of textbooks to non-public schools, struck down the statute as violative of the state constitution. A subsequent opinion of the state attorney general interpreted the decision to mean that a private nursing school, whose governing board and directors

were all members of a religious order, could not receive financial assistance from the state's division of vocational-technical education. The opinion implies that any attempts to contract with private schools may raise constitutional issues under the state constitution. Yet, the statutes authorizing contracting with private vocational training institutions have not, to our knowledge, been held unconstitutional by a state court. In this situation, we have placed this state in a category which indicates that it is unclear whether either the State Board or LEAs may enter into such contracts.

5. The State Board Appears to Have Authority to Contract With Private Vocational Training Sources, But It Is Unclear Whether the LEAs Do

The states in this category include: (1) Alabama, (2) Arkansas, (3) Connecticut, (4) Florida, (5) Maine, (6) Maryland, (7) Minnesota, (8) Nevada, (9) New York, (10) North Carolina, (11) Oklahoma, (12) Rhode Island, (13) Utah, (14) Vermont, (15) Virginia, and (16) West Virginia.

The reasons for placing different states in this category varied from state to state. In general, states were placed in this category because state statutes governing State Boards appeared to provide either express or implied authority for the State Board to contract with private vocational

training sources and it was unclear whether LEAs had such authority.

With respect to the authority of LEAs to enter into such contracts, we found that although state statutes do not appear to provide express or implied authority for LEAs to contract with private vocational training institutions, the FY 77 State Plans for most of these states indicate that LEAs may enter into such contracts. Thus, the content of these State Plans represents an assertion that such contracting is authorized. Given this apparent discrepancy between state statutes and State Plans, we have placed such states in a category that indicates that the State Board appears to have authority to contract with private vocational training sources, but it is unclear whether LEAs do.

6. It Is Unclear Whether the State Board Has Authority to Contract With Private Vocational Training Sources, But It Appears That the LEAs Do Not

The only state which we have placed in this category is Wisconsin. This has been done because although state statutes do not appear to provide express or implied authority for the State Board to contract with private vocational training sources, the FY 77 State Plan asserts that the State Board may contract with private postsecondary vocational training institutions. In addition, a 1972 opinion

of the state attorney general indicates that LEAs may only contract with public educational institutions for instructional services. Consequently, we have placed Wisconsin in this category.

IV. General Findings, Conclusions and Recommendations Concerning the Legal Framework for Contracting With Private Vocational Training Sources

A. Introduction

This section of the report contains the general findings, conclusions, and recommendations concerning the federal and state legal frameworks for contracting with private vocational training sources. The federal legal framework includes statutory provisions and regulations. The state legal framework includes state constitutional provisions, statutes, regulations, and relevant provisions of the FY 1977 State Plans for vocational education.

B. General Findings, Conclusions, and Recommendations Concerning the Federal Legal Framework

1. Federal Statutory Provisions

The review of relevant federal statutory provisions indicated that Congress has expressly authorized the use of federal vocational education funds for contracts with "private vocational training institutions."[92/] However, Congress has

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92/ Section 122(a)(7) of the Act (20 U.S.C. 1262(a)(7)). See supra, note 1 for the redesignation of this provision.

imposed express conditions related to contracting with "private vocational training institutions". Such institutions must be able to (1) "make a significant contribution to attaining the objectives of the State Plan"; (2) "provide substantially equivalent training at a lesser cost"; or (3) "provide equipment or services not available in public institutions".[93]

In addition, Congress did not authorize contracting with all private training sources. Instead, it carefully defined what it meant by a "private vocational training institution", i.e., such institution must (1) admit "as regular students only persons who have completed or left elementary or secondary school and who have the ability to benefit from the training offered"; (2) be "legally authorized to provide, and provides within that state, a program of postsecondary vocational or technical education designed to fit individuals for useful employment in recognized occupations"; (3) have been in existence for two years or be specially accredited by the Commissioner; and (4) be accredited in accordance with certain statutory provisions.[94]

The statutory conditions do not appear to unduly constrain contracting with private vocational training institutions. In effect, they require that there be a reasonable justification

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93 / Id.

94 / Section 108(11) of the Act (20 U.S.C. 1248(11)). See supra, note 1 for the redesignation of this provision.

for deciding to enter into such contracts.

The statutory definition, however, raises interpretative questions. First, does the requirement that a private vocational training institution admit "as regular students only students who have completed or left elementary or secondary school . . ." (emphasis added)[95/] mean that such institutions must admit only persons who have completed or left elementary and secondary education? Or does the qualifying phrase "as regular students" imply that such institutions could also admit special students who have not completed or left elementary or secondary school? In view of the phrase "as regular students", we are of the opinion that such institutions could satisfy the terms of the statutory definition if they also happened to admit special students who were still enrolled in public school.

Second, does the requirement that such institutions provide "a program of postsecondary vocational or technical education . . ." (emphasis added)[96/] mean that contracts may not be entered into with an institution that provides only a program of secondary vocational or technical instruction? We are of the opinion that this interpretation is consistent with the statutory language and with Congressional intent. However, we do not read this part of the statutory definition as prohibiting

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95 / Id.

96 / Id.

a contract for the instruction of secondary students with an institution offering a "post secondary" program. Assuming that such a contract met applicable requirements of state and/or local law, the federal statute would not bar the contract.

These interpretative questions suggest that the statutory definition could have the effect of discouraging contracts for the vocational training of public secondary school students. However, we lack information to determine whether or not this is the case. If subsequent research indicates that the statutory definition is a factor in discouraging contracts for the vocational training of secondary school students, then we recommend that the Office of Education recommend to Congress that the statutory definition be amended to remedy this problem.

2. Federal Regulations

Although the federal statutory provisions expressly authorize contracting with "private vocational training institutions", as defined, we found that the federal regulations have indicated that contracting is not limited to "private vocational training institutions".

The 1970 regulations promulgated by the Office of Education to implement the Vocational Education Amendments of 1968 did not expressly refer to contracts with "private vocational training institutions". Rather, they indicated that contracts could be entered into with "public or non-public agencies or

institutions".[97] As previously indicated,[98] it is unclear whether Congress intended such a broad interpretation of the statutory provisions authorizing such contracting, e.g., 1970 regulations were not entirely consistent with the statutory provisions. For example, whatever the phrase "non-public agencies and institutions" meant, it would be contrary to the statutory definition of "private vocational training institution" to interpret the phrase as including an institution which did not provide a "program of postsecondary vocational or technical education . . ."[99]

In the 1975 regulations, the Office of Education made the text of the regulations more consistent with the statute by dropping the phrase "public or non-public agencies or institutions" and replacing it with "private vocational training institutions".[100] Indeed, the comments preceding the text of 1975 regulations in the Federal Register stated that the "general contracting provision in §102.5 is changed to be consistent with the Act."[101] However, the comment then went on to state that "contracting is not limited to" private vocational

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97 / Sec. 102.5(a), 35 F.R. 7338 (May 9, 1970).

98 / See supra, note 13 and p. 22.

99 / Sec. 108(11) of the Act (20 U.S.C. 1248(11)). See supra, note 1 for the redesignation of this provision.

100/ Sec. 102.5(a), 40 F.R. 8082 (February 25, 1975).

101/ 40 F.R. 8077 (February 25, 1975).

training institutions" and may include "public or non-public agencies or institutions".[102] As indicated, this interpretation was not entirely consistent with the Act.

Following the Education Amendments of 1976, which contained neither authority for contracting nor a definition of "private vocational training institution", the Office of Education issued proposed regulations which indicated that contracts could be entered into with "private vocational training institutions or other existing institutions capable of carrying out vocational programs".[103] The Vocational Education Technical Amendments subsequently reenacted the statutory authority and the definition of "private vocational training institution". Final regulations to implement the Education Amendments of 1976 and the Vocational Education Technical Amendments will soon be issued.

At this time it is unclear whether the final regulations will narrowly construe the statutory authority and definition or whether they will reflect a broader interpretation by the Office of Education. In the absence of the final regulations, we make no recommendation about them.

However, we note that previous regulations, both proposed and final, do not reflect narrow interpretation of the statutory authority and definition. First, the 1970 regulations indicated

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102/ Id.

103/ Sec. 104.514(a), 42 F.R. 18565 (April 7, 1977).

indicated that contracting was authorized with "public and non-public agencies and institutions" rather than just with "private vocational training institutions".[104] Second, comments preceding the 1975 regulations indicated that "contracting is not limited to "private vocational training institutions" and may include public or non-public agencies or institutions".[105] Third, in the absence of any express statutory authority, the proposed 1977 regulations indicated that contracting would be authorized with "private vocational training institutions and other existing institutions capable of carrying out vocational programs".[106] To the extent that such regulations may have exceeded what Congress intended to authorize, we suggest that the Office of Education may wish to consider recommending broader statutory authority for contracting with private vocational training sources.

C. General Findings, Conclusions and Recommendations About the State Legal Framework

1. State Constitutional Provisions

Although an analysis of state constitutional provisions was not part of the study design, we found that, in a small

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104/ Sec. 102.5(a), 35 F.R. 7338 (May 9, 1970).

105/ 40 F.R. 8077 (February 25, 1975).

106/ Sec. 104.514(a), 42 F.R. 18565 (April 7, 1977).

number of states, provisions of the state constitutions appear to restrict or prohibit, or have been interpreted by state attorney generals or state courts to restrict or prohibit, the ability of State Boards or LEAs to enter into such contracts.[107] In most of these cases, the provisions of the state constitutions are ones which deal with restrictions on the use of public funds.

For example, section 18-4 of the Kentucky State Constitution provides in part, that ". . . any sum which may be produced by taxation or otherwise for the purposes of common school education, shall be appropriated to the common schools, and to no other purpose." An opinion of the Kentucky state attorney general, cited in the FY 1977 State Plan, indicates that this section of the constitution (in conjunction with other state statutes), prevents state school monies from being used to contract with private vocational institutions not under the direct control and supervision of the State Board of Education.

In Mississippi, the Constitution provides in article 8, section 208, in part, that ". . . nor shall any funds be appropriated toward the support of any sectarian school, or to any school that at the time of receiving such appropriation is not conducted as a free school." The Mississippi FY 1977 State Plan indicated that this section prohibits the state from contracting

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107/ These states which brought such constitutional provisions to our attention or which referred to them in FY 1977 State Plans are: Kentucky, Mississippi, Nebraska, and South Carolina.

with private agencies for the conduct of educational programs where state money is involved.

In such states the state constitution presents a legal barrier to contracting with private vocational training sources. There are two possible solutions to this problem. First, in those states where previous state attorney general's opinion interpreted the state constitution as prohibiting such contracting, the state board of education could seek a more current opinion from the state attorney general. Second, appropriate state constitutional amendments could be proposed and possibly ratified.

2. State Statutes

State statutes related to the authority to contract with private vocational training sources vary widely, from the very specific to the broadly general. Some state statutes expressly authorize such contracting. Others do not. Certain state statutes contain language which could arguably be construed to provide implied authority for such contracting. However, the extent to which a state court might, in the absence of express statutory authority, find implied authority will vary from state to state.[108/]

With respect to express statutory authority, there are states such as California, with specific legislation authorizing

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108/ See supra, pp. 35-58.

". . . any state agency . . .[to] enter into contracts with private business, trade and technical schools . . . and [to] use any federal, state, local or private funds to provide . . . training . . . programs operated by private . . . schools."[109/] Or Ohio, which authorizes ". . . any public board of education [to] contract with any private individual or firm for the purchase of any vocational education services and may pay for such services with public funds . . ."[110/] Such statutes generally detail who is authorized to contract, with whom they are authorized to contract, and the funds which may be used for such contracting.

Other states have legislation clearly authorizing such contracting, but in less comprehensive terms. For example, the Kansas code provides that the State Plan may provide for vocational education under contract to the extent authorized by the Federal Vocational Education Act.[111/] Another example is the Colorado code, which provides that the State Board shall provide for the implementation of the State Plan for occupational education, and for this purpose may enter into contracts with, or purchase services from the governing boards of private vocational schools.[112/]

With respect to implied authority, many states have

109/ Cal. Ed. Code, §§8090-8092, (West 1976).

110/ Ohio Rev. Code, §§3313.90 and .91, (1976).

111/ Kansas Stats. Ann., §72-4413(h), (Vernon's 1972).

112/ Col. Rev. Stats., §23-60-304(2), (Supp. 1976).

statutes which do not expressly authorize contracts with private vocational training sources. In general, these states may be divided into two categories: (1) those states with legislation granted State Boards or LEAs broad authority which could be construed to provide implied authority to enter into such contracts; and (2) those states with legislation granting State Boards or LEAs narrow or specific powers from which it does not appear that authority to enter into such contracts can be implied. In the first category, for example, are states such as Michigan, whose statutes authorize the state board of education to have "all power necessary"[113/] to cooperate with the Office of Education in the administration of the federal Vocational Education Act and to take "any necessary action consistent with state law" to comply with the Act.[114/] States such as New Jersey, whose statutes merely designate the board for the administration of federal funds for vocational education, and nowhere grant implied or express authority to enter into such contracts would fall into the second category. Even in those states where we have indicated that state statutes could be construed to provide implied authority, it is possible that a current state attorney general's opinion which considered the relevant case law of the state could reach a conclusion which differs from the interpretation advanced in this study.[115/] Thus, the major legal

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113/ Mich. Comp. Laws, Ann., §395.21 (1976).

114/ Mich. Comp. Laws, Ann., §395.31 (1976).

115/ See supra, p. 7.

barrier to State Boards and LEAs contracting with private vocational training sources is the lack of express statutory authority for such contracting.

The mere fact that many state statutes do not expressly and specifically authorize such contracting does not necessarily mean that certain state statutes could not be construed to provide implied authority. The situation varies from state to state. Consequently, we recommend that, if a state wishes to develop a more flexible vocational education delivery system by contracting with private vocational training sources, but lacks express statutory authority to do so, the state should (1) seek a current opinion from the state attorney general about the extent to which the State Board and LEAs have implied authority to enter into such contracts and (2), if the opinion indicates a lack of sufficient implied authority, recommend to the state legislature that authorizing legislation be enacted. 116/

3. State Regulations

The findings concerning state regulations related to contracting with private vocational training sources for services,

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116/ The statutes of states which already express authority to enter into such contracts can be consulted to determine how other state legislatures have addressed this question. The Appendix contains several such examples. See, e.g., the profiles for California (p. 101), Colorado (p. 107), Iowa, (p. 115), Kansas (p. 119), North Dakota (p. 126), and Ohio (p. 128).

are similar to the findings about state statutes, i.e., in the majority of states there are no regulations dealing specifically with such contracting.

In those states which have such regulations, the regulations do not prohibit such contracting, but merely define certain conditions or limitations related to contracting with private vocational sources.

States with regulations related to contracting with private vocational training sources generally fall into two categories: (1) those states with statutes granting express authority for such contracting which have regulations further defining the limits and conditions of such contracting; and (2) those states which appear to have implied authority for such contracting and have statutes authorizing the promulgation of regulations.

Within the first category are states such as California and Colorado. In California, state statutes expressly authorize any state agency to enter into contracts with private schools, and administrative regulations provide guidelines for such contracting, e.g., the standards to be employed by the State Department of Education to determine the appropriateness of vocational education programs to be provided under contract; the provisions to be expressly included in such contracts. In Colorado, where state statutes provided expressly authorize both the State Board and LEAs to enter into such contracts, state regulations outline and define the conditions under which

vocational education instruction may be provided under contract.

Within the second category are states such as Washington and Florida. In Washington, state statutes authorize the Commission for Vocational Education to promulgate such rules and regulations as are necessary. Administrative regulations provide authority for the Commission, the State Board for Community Colleges, and local boards to contract with other agencies and institutions for vocational instruction, and define and outline the conditions for such contracting. In Florida, state statutes authorize the State Board to adopt such rules, regulations and standards as it may find necessary for the improvement of public education. State regulations define the scope of vocational education courses as those authorized in the State Plan, (which provides for vocational education under contract), and in addition, authorize the Commissioner to enter into contracts on behalf of the State Board.

The type of states discussed above are the exception rather than the rule. Most state administrative codes or state regulations are silent about whether State Boards or LEAs can contract with private vocational training institutions. The absence of such regulations can, in most cases, be traced directly to the absence of express statutory authority for contracting with private vocational training sources. In other cases, it may be attributable to the fact that some states, State Boards or

State Departments of Education do not regulate with the same degree of detail as do others.

In general, either express or implied authority to contract with private vocational training institutions is a condition precedent to state regulations governing such contracting. In many states such authority is either unclear or does not appear to exist. Consequently we abstain from making a general recommendation about state regulations in this area.

We do suggest, however, that if states whose authority to contract is now unclear or is nonexistent, do clarify or enact such authority, the different examples of state regulations presented in this study may provide useful models for state regulations governing contracting with private vocational training sources.[117/]

4. The Vocational Instruction Under Contract Provisions of FY 197/ State Plans

The review of the contracting provisions of FY 1977 State Plans revealed two major categories of contracting provisions: (a) those which indicated contracting was not authorized; and (b) those which indicated that the State Board and/or LEAs could enter into contracts. Set forth below is a description of each of these categories.

117/ See the state profiles in the Appendix. Examples of states which have regulations are: California (p. 102). Colorado (p. 108), Michigan (p. 122), and Washington (p. 140).

a. State Plans Which Indicate Contracting Is Not Authorized -- There are six states whose FY 1977 State Plans indicate that vocational instruction under contract is not authorized under state law.[118/] There are no specific statutory prohibitions against contracting with private vocational training sources in any of these states. Rather, interpretations of constitutional provisions or the lack of specific statutory authority has been cited as the reason why such contracting is not authorized.

b. State Plans Which Indicate That the State Board and/or LEAs May Enter Into Contracts -- At the outset, it is important to note that a State Plan cannot, in and of itself, legally authorize a State Board or LEA to contract with private vocational training sources, if such contracting is not authorized under state law. We note that federal regulations in effect at the time the FY 1977 State Plans were submitted to the Office of Education contained at least three requirements related to the state's authority under state law to carry out the State Plan.

First, the regulations required that the State Plan be certified by the state attorney general or another appropriate official.

> The State Plan . . . shall also include as an attachment a certificate by the State's Attorney General, or other official designated (by) . . . law to advise the

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118/ These states are Georgia, Kentucky, Mississippi, Missouri, Nebraska and South Carolina.

> State Board on legal matters, to the effect that . . . all the plan provisions with respect to the use of funds under the Act can be carried out by the State. [Emphasis added.] (45 C.F.R. §102.31(d)(2)(1976)).

Second, the regulations required that, at least the initial state plan contain "copies of, or citations to all pertinent laws and interpretations of laws by appropriate state officials or courts . . ." (45 C.F.R. §102.32(b)(1976)).

Third, the regulations also required that, "Whenever there is any material change . . . in pertinent State law . . . affecting the programs under the plan", the state board should submit an amended administrative plan to the Commissioner. [Emphasis added.] (45 C.F.R. §102.31(c)(1)(1976)).

Taken together, these three provisions of the federal regulations, which contain requirements related to a showing of the state's authority under state law, could lead to a presumption that whatever is contained in the State Plan is authorized under state law. As will be discussed below, the contracting provisions of some state plans appear to rebut this presumption.

In general, we found that in 44 states[119/] four outlying areas[120/] and the District of Columbia, the State Plans provide

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119/ Those states are: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

120/ The FY 1977 State Plan for Puerto Rico has no provision for vocational education under contract.

for either the State Board, or LEA, or both, to contract for vocational education services. Within this group, there is a considerable diversity in the provisions for such contracting.

For example, the contracting provisions of the State Plans of Illinois,[121] Kansas,[122] and Louisiana[123] appear very similar to the federal regulations, i.e., they provide for contracts with "public and non-public agencies and institutions" and with private post-secondary vocational training institutions, and contain the statutory definition of such institutions.[124]

Other contracting provisions of State Plans reflect varying degrees of state discretion. The following are a few examples of such diversities. In the Texas[125] and New Hampshire[126] State Plans, provision is made for contracting only with private post-secondary vocational training institutions. Texas adds the additional requirement that these institutions be regulated by the state. The D.C. State Plan goes beyond the federal regulations by defining "public and non-public agencies and institutions" as

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121/ See infra, pp. 111 - 113.

122/ See infra, pp. 119-120 .

123/ See infra, pp. 174-177 .

124/ See supra, pp. 19-26 for a discussion of the 1970 and 1975 regulations.

125/ See infra, pp. 136-137.

126/ See infra, p. 199.

labor unions, and business and industrial firms.[127] The Idaho State Plan provides only that the state board may provide instruction on an individual basis under contract.[128] The South Dakota State Plan contains an additional requirement that any contracting agency must submit a plan containing required information.[129] The Vermont State Plan restricts contracting to private non-profit education agencies and non-profit post-secondary institutions.[130] Additionally, although the Act defines "private vocational training institutions" in part, as those offering post-secondary programs,[131] the Alabama State Plan provides for contracting for instruction on the secondary level.[132]

Within the group of states whose state plans indicate that the State Board and/or LEAs may enter into contracts, we found that there are five states, one outlying area, and the District of Columbia whose FY 1977 State Plans provide for vocational instruction under contract, despite the apparent

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127/ See infra, p. 148.

128/ See infra, p. 172.

129/ See infra, p. 206.

130/ See infra, p. 244.

131/ See supra, n. 10 for the full definition.

132/ See infra, p. 211.

absence of either express or implied authority for either the State Board or LEA to enter into such contract.[133/]

We have concluded that there are a number of possible explanations for why the contracting provisions of a FY 1977 State Plan indicates that the State Board and/or LEAs may enter into such contracts when state law does not appear to authorize contracting with private vocational training sources. First, the state may be operating under an erroneous assumption that federal authority for contracting with private vocational training sources, as provided in the Act and regulations, is sufficient to authorize such contracting despite the absence of authority under state law.

Second, the contracting provisions of some State Plans may have been developed as "compliance documents" without due consideration of the legal issues raised by the implementation of the contracting provisions of the State Plan.

Third, those state officials, legal or otherwise, who review and approve State Plans may not have fully considered the legal issues raised by asserting that vocational instruction under contract may be provided in the absence of authority under state law for such contracting.

In addition, the approval of such FY 1977 State Plans by

133/ These states and areas are: American Samoa, District of Columbia, Indiana, Massachusetts, New Hampshire, New Jersey and Oregon.

the Office of Education suggests that OE did not, when reviewing the FY 1977 State Plans, make an independent determination of whether states had authority under state law to implement the contracting provisions described in the State Plans.

Thus, the problem is twofold in that it appears to encompass both the state and federal levels. With respect to the state level, we recommend that those states which do not have express statutory authority to contract with private vocational training sources (1) review the extent to which they may have implied authority to contract; and (2) insure that future State Plans accurately reflect their authority under state law to enter into such contracts.

At the federal level, we recommend that the Office of Education insure that a state has authority under state law to enter into such contracts before approving a State Plan which indicates that the State Board and/or LEAs may contract with private vocational training sources.

5. State Statutes and Regulations Governing the Licensing of and Minimum Standards for Private Vocational Training Sources

With two exceptions, all states have statutes which govern the licensing of and minimum standards for private vocational training sources. 134/

134/ The exceptions are Missouri and Utah.

In general, it appears that the state licensing statutes and regulations do not restrict the ability of public education agencies to enter into contracts with private vocational training sources. Rather, they limit with whom these contracts may be entered into, by establishing minimum standards for licensing. The licensing provisions vary widely from state to state. Some examples of requirements representative of more than one state follow.[135/]

Several states, including California, Colorado, Kansas, Kentucky, Louisiana and New York have very detailed and specific statutory requirements for minimum standards for the licensing of proprietary schools, including: instructor/administrator qualifications; instructional quality, standards for health, safety, space, equipment and instructional materials; mandatory surety bonds for both institutions and agents of the institutions; requirements for student tuition refund policies; and prohibitions against false advertising and misrepresentation.

Other states, including Alabama, Arizona, Michigan, Ohio, and Wyoming, merely require certification or licensing of the schools (sometimes to be accompanied by a surety bond) before they may operate in the state, without specific or detailed requirements spelled out in the state statutes.

135/ The applicable statutes and regulations for each state are contained in the state profiles which comprise the Appendix.

The board which is authorized in the state to certify, license or accredit proprietary schools varies from state to state. States such as New Mexico and Colorado authorize the same board that acts as the board for the control of vocational education as the board for the licensing of proprietary schools. Other states such as Wyoming, Hawaii, Idaho and South Carolina authorize the state board of education as the licensing agency. In addition, there are states such as Pennsylvania and Mississippi which establish a completely separate board, either within or without the State Department of Education, as the agency authorized to license proprietary schools.

Many state licensing statutes include a provision which authorizes the licensing board to accept the accreditation of an institution by a nationally or regionally recognized accrediting agency as evidence of compliance with the minimum standards established by the state.

Since state licensing or accrediting statutes do not appear to present a barrier to contracting with private vocational training sources, we present no recommendation in this area.

APPENDIX

Introduction

This section contains, for each state and outlying area, a profile of laws and regulations related to contracting with private vocational training sources. Relevant sections of each Fiscal Year 1977 State Plan for vocational education have also been included in each profile.

The format for each profile is as follows: (1) State Statutes related to control of vocational education; (2) State Statutes or State Constitutional Provisions related to authority to contract with non-public agencies or institutions for vocational education services; (3) State Regulations related to contracting for vocational education services; (4) Provisions of the State Plan for Vocational Education related to vocational education under contract; (5) State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools; and (6) Policy Analysis.

The profiles are divided into the six categories that emerged from our analysis. As indicated in the Table of Contents, the states and outlying areas are arranged alphabetically within each category. However, as

an aid to locating individual states or areas within the Appendix, the following list displays states and areas alphabetically rather than by category.

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A. Both the State Board and LEAs Appear to Have Authority to Contract With Private Vocational Training Sources

States or Territories

In This Category

1. Arizona
2. California
3. Colorado
4. Illinois
5. Iowa
6. Kansas
7. Michigan
8. North Dakota
9. Ohio
10. Pennsylvania
11. Puerto Rico
12. Texas
13. Virgin Islands
14. Washington
15. Wyoming

Arizona

I. State Statutes related to control of vocational education.

The State Board of Education is the State Board for the purposes of the Vocational Education Act and may cooperate with federal vocational education authorities in the administration of the Act. (Arizona Rev. Stats. Ann., §15-1053 B. (1974))

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services.

State Statutes do not expressly authorize contracting with private vocational sources. However, they do provide that "the State Board of Education "shall prescribe rules and regulations for the control of vocational education" (A.R.S.A. §15-1054 (1974)) and that "any school district may organize schools or classes in accordance with the federal law accepted by §15-1053 and the rules and regulations of the State Board for control of vocational education." (A.R.S.A. §15-1054 (1974)). (Emphasis added.)

III. State Regulations related to contracting for vocational education services.

State Regulations cite the above language of A.R.S.A. §15-10531B. and 15-1054, but do not expressly refer to contracting with private vocational training sources. (Arizona Administrative Rules and Regulations, §7-7-2-602A., B. and C. (1975)).

IV. Provisions of the FY 77 State Plan for Vocational Education related to vocational education under contract.

The Arizona State Plan for Vocational Education provides in section 1.8 that:

The State Board may make arrangements for the provision of any portion of a program of instruction on an individual or group basis by public or nonpublic agencies or institutions (other than the State Board or educational agency) through a written contract with the State Board or through funding of instruction provided through contract between a local educational agency and a nonpublic agency or institution: Each contract shall describe the portion of instruction to be provided by such agency or institution and incorporate the standards and requirements of vocational instruction set forth in the State Plan. Each contract shall be entered into only upon a determination by the State Board of satisfactory assurance that:

Arizona (cont'd)

the contract is in accordance with State and local law, the instruction to be provided under contract will be conducted as a part of the vocational education program of the State and will constitute a reasonable and prudent use of funds available under the State Plan, and

the contract contains an assurance that funds paid over to the contraction agency or institution will be used only to lower the rate of or eliminate tuition, fees, and other charges which otherwise would be collected from persons benefiting from such portion of the program.

Each contract shall be reviewed annually by the parties concerned.

Section 1.81 provides that,

Post-secondary vocational instruction provided in other than public institutions may be provided only through arrangements with private post-secondary vocational training institutions entered into pursuant to 1.8 where the State Board determines that such private institutions can make a significant contribution to attaining the objectives of the State Plan, and can provide equipment or services not available in public agencies or institutions.

For purposes of this paragraph, a "private post-secondary vocational training institution" means a private business or trade school, or technical institution or other technical vocational school providing post-secondary education in any state which meets the requirements set forth in subparagraphs (A) through (D) of section 108(11) of the Act.

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

The State Board of Private Technical and Business schools shall promulgate "reasonable standards of instruction" and issue licenses to schools. No private technical or business schools shall operate in the state without a license. Ten percent of all bond and license fees collected shall be placed in the general fund of the state, with the remainder going into a separate fund known as the private technical and business school fund, to be used for the expenses of the Board, and in prosecuting violations of this licensing article. (A.R.S.A.) Art. 4, §§15-931 to -945. (1974)).

Arizona (cont'd)

VI. Policy Analysis

Although state statutes do not expressly refer to contracting with private vocational training, it appears that the language of A.R.S.A. §§15-1053 and 15-1054 is sufficiently broad to suggest that both the State Board and LEAs may have implied authority to enter into such contracts. The State Plan provides that the State Board may provide instruction through written contracts with public or non-public agencies or institutions (other than the State Board or LEA),or through funding of written contracts between an LEA and a non-public agency or institution. The State Board may contract with post-secondary vocational training institutions. Thus, it appears that the State Board and LEAs may have implied authority to contract with private vocational training sources.

California

I. State Statutes related to control of vocational education.

The State Board is designated as the State Board ". . . to carry out the purposes and provisions of [the Vocational Education Act] . . ." and is given all necessary power and authority to cooperate with the Office of Education and in the administration of federal acts and vocational education. Cal. Ed. Code, §§6251 to 6254, (West 1976).

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services.

Cal. Ed. Code, (West 1976), states in part that:

Any state agency, including, but not limited to, school districts may enter into contracts with private business trade and technical schools to provide training programs when such schools have the facilities to provide such training. The attendance of pupils in courses of a private school pursuant to a contract authorized by this section shall not be counted for reporting to the Department of Education for the purpose of receiving apportionments from the State School Fund unless such contract also meets the requirements of Section 8092 [§8090].

Any state agency including, but not limited to, local school districts and Community College districts may use any federal, state, local, or private funds to provide training or retraining programs operated by private business, trade and technical schools. [§8091]

Any school district, Community College district, county superintendent, or governing body of an agency maintaining a regional occupational center or program may contract with a private post-secondary school approved pursuant to Chapter 3, (commencing with Sec. 94300) to provide vocational skill training authorized by this code. All contracts between a public entity and a private educational institution entered into pursuant to this section shall:
1). be approved by the State Department of Education or Chancellor pursuant to rules and regulations adopted by the State Board of Education or the board of governors as appropriate;
2). provide that the amount contracted for per student shall not exceed the total direct and indirect costs to provide the same training in a public school or the tuition the private school charges its students, whichever is lower;

California (cont'd)

3). provide that the public school students receiving training pursuant to such contract may not be charged additional tuition for any training included in the contract;
4). provide that all programs, courses and classes of instruction meet standards of the California Plan for Vocational Education.

The students who attend a private post-secondary school pursuant to a contract under this section shall be enrollees of the public school entity and the attendance of such students at the private school shall be credited to the public school entity for the purposes of apportionments from the State School Fund.

The State Department of Finance and the State Department of Education may audit the accounts of both the public entity and the private party involved in such contracts to the extent necessary to assure the integrity of the public funds involved. [§8092] (Cal. Ed. Code, (West 1976)

III. State Regulations related to contracting for vocational education services.

The California Administrative Regulations provide in ch. 10, §§ 11535 to 11545, in part:

That the provisions in this chapter apply to all contracts entered into under the authority of Ed. Code §8092 except those in which a community college district is a party. [§11535]

Any public entity desiring to enter into a contract with a private post-secondary school shall request approval from the State Dept. of Ed. [§11539]

The following standards shall be employed by the State Department of Education in determining the appropriation of the Vocational education to be provided;
a. manpower needs and job opportunities that directly relate to the program offered have been identified;
b. proposed program does not unnecessarily duplicate existing programs;
c. the program provides vocational education opportunities for a greater number of students then could otherwise be possible;
d. contracted services shall not reduce or supplant existing vocational education programs of the public entity;

California (cont'd)

e. all programs, and courses must meet standards set forth in the State Plan;
f. the public entity establish and maintain for not less than five years, in accordance with the provisions of the Cal. School Accounting Manual, a clear and separate audit trail of all fiscal, enrollment and statistical data (to be made available for audit to the federal government). [§11542]

Each contract shall expressly include, but not be limited to, the following provisions:
a. except where prohibited by law, the contractor provide at his own expense, workman's compensation insurance coverage for any student that performs services that represent actual or potential income for the contractor.
b. each contractor must be in compliance with Title VI of the Civil Rights Act of 1964, Title IX of the Higher Education Act of 1972, and all applicable local, state, and federal health and safety regulations.
c. after July 1, 1976 all instruction must be provided only under the immediate supervision or control of teachers who hold valid California credentials authorizing the vocational subject to be taught. [§11545]

IV. Provisions of the FY 77 State Plan for Vocational Education related to vocational education under contract.

The California State Plan for Vocational Education provides in section 1.8 that:

There are in California nonpublic vocational schools and technical institutes with extensive capabilities and experience in vocational instruction. Arrangements may be made for the provision of vocational instruction on an individual or group basis in such nonpublic schools.

1.81 (Private Postsecondary Vocational Training Institutions.) The following provisions will apply in all contractual arrangements with nonpublic postsecondary vocational schools:
a). The State Board, the Board of Governors, and school district.governing boards may provide vocational education programs through contracts with private educational agencies.

California (cont'd)

b). In each instance where a course in a private educational agency is contracted for, it must be certified by the Bureau of School Approvals as meeting the minimum standards set forth in Division 21 of the California Administrative Code, Title 5, Education, pertaining to teacher qualifications, financial status, professional integrity, adequacy of physical facilities, admission requirements, and adequate records. The course must also be certified to be in accord with vocational objectives and other general operational policies and standards as may be pertinent to the conduct of training under the state plan.
c). Before the State Board, the Board of Governors, or a local public educational agency may enter into such a contract, the following requirements must be met:

1) Each contract is in writing.

2) The contract incorporates the applicable standards and requirements contained in this state plan and prescribed by the State Board.

3) Each contract is in accordance with state and local laws.

4) Instruction under contract will be conducted as a part of the State and local program under the supervision of the State Board or the Board of Governors.

5) The contract constitutes a reasonable and prudent use of funds available under this state plan.

6) The private educational agency can provide substantially equivalent training at comparable costs.

7) Such contracts will be reviewed at least annually by the parties concerned.

8) Each contract includes an assurance that all funds paid to a contracting agency or institution will be used only to lower the rate of, or eliminate, tuition fees and other charges that would otherwise be collected from persons receiving such instruction.

9) There is a realistic relationship between the course or programs and actual or anticipated employment opportunities and the abilities, interests, and aptitudes of persons to be trained.

1.81-1 (Special Requirements.) Arrangements for vocational instruction in private post-secondary vocational training institutions must, in addition to the preceding, include the determination that the private institution can provide substantially equivalent training at comparable cost or provide equipment and services not available in public agencies or institutions.

California (cont'd)

1.82 (Other Agencies and Institutions). The same general and/or specific provisions will apply to arrangements with other public and non-public private agencies and institutions.

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

No course of education or training leading to an educational, technological, professional or vocational objective shall be offered, and no institution shall offer a degree or certificate until it has been approved and authorized by the Superintendent or Public Instruction. (Accreditation shall be granted to institutions accredited by a national or regional accrediting agency recognized by the USOE without further proof of compliance with standards.)

Approval may be granted when the institution is found to meet the following criteria:
1). that courses, curriculum and instruction are consistent in quality, content and length to similar courses in public schools or other private schools in the state, with recognized accepted standards, or that the courses, curriculum, and instruction meet recognized accepted standards for reaching the professed or claimed objective for the course;
2). that the institution has adequate space, equipment, instructional personnel and materials to provide training of good quality;
3) that the education and experience qualifications of the director, administrators, and instructors are adequate;
4) that a copy of course outlines, schedule of tuition, fees and other charges, regulations, and rules of operation and conduct is available to students upon enrollment;
5) that the institution complies with all local, city, county, municipal, state and federal regulations, such as fire, building and sanitation codes (the Department of Education may require evidence of compliance);
6) that the institution is financially sound and capable of fulfilling its committments for its approved courses;
7) that the institution does not use advertising which is erroneous or misleading;
8) that the institution does not exceed enrollment facilities and equipment;
9) that the institution maintains a refund schedule in accordance with minimum standards adopted by the Super-

California (cont'd)

intendent.
(Cal. Ed. Code, T. 3, ch. 3, §§94300-94327 (West 1976)).

VI. Policy Analysis

State Statutes provide that any State Agency (including school districts) may enter into contracts with proprietary schools. Any public entity (except a community college district) desiring to enter into contracts with private post-secondary schools shall obtain approval from the State Department of Education. Contracts with post-secondary schools may be entered into only with schools approved pursuant to ch. 3 of the California Education Code. The State Plan provides that the State Board, Board of Governors, and school district governing boards may contract with private educational agencies and institutions. Thus, it appears that in California, State statutes authorize both the State Board and LEAs to contract with private vocational training sources.

Colorado

I. State Statutes related to control of vocational education.

§23-60-303, Col. Rev. Stats. (1973) designates the State Board for community colleges and occupational education as the State Board for Vocational Education, and the sole state agency for receiving and administering the State Plan for vocational education and funds appropriated by Congress for programs of vocational education.

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services.

§23-60-304(2), Col. Rev. Stats. (Supp. 1976), states that the board shall provide for the implementation of state plans for occupational education and for this purpose may enter into contracts with or purchase services from the governing bodies of . . . private vocational schools that have been approved under the provisions of article 59 of title 12 C.R.S. (1973) and other appropriate agencies and institutions.

"The Colorado Vocational Act of 1970" (as amended by H.B. 1039, 1976, hereinafter CVA 70) provides in part that:

Any school district in the State conducting any course for vocational education approved by the State Board for Community Colleges and Occupational Education, is entitled to vocational education support funds . . . (c) for the purpose of computing approved vocational education program costs, the following shall be included: . . . II. the cost of services to be provided by another education agency or institution. (Col. Rev. Stats., §23-8-102), (1973).

Sec. 23-8-103 of the CVA 70, provides in part, (1) that the Board shall not approve vocational education program support unless the courses of vocational education conducted by a school district meet the following standards, including . . . (2)(d) be conducted in facilities that are sufficiently equipped to permit adequate training and education. Such facilities may be located within or without the school district, and may be housed in buildings which are not owned or operated by the school district. (3) In approving programs and funds under this article, the board shall attempt to avoid unnecessary duplication in either facilities or staffing for vocational education in any school district or area of the State; and where feasible, the sharing or facilities shall be required by the Board. (Col. Rev. Stats., (1973), amended, (Supp. 1976)).

Colorado (cont'd)

III. State Regulations related to contracting for vocational education services.

The Rules and Regulations for the Colorado Vocational Act of 1970 provide that:

2.0 The following items are allowable under the CVA of 1970:
2.6 Contract Costs:

2.61 Costs for services provided to the local educational agency by another agency or institution.

A. Contracted costs for providing vocational education instruction as outlined in secs. 2.1 - 2.51 [including: salaries for vocational teachers, vocational supervisors, local vocational directors, vocational teacher aids and paraprofessionals; official travel; books and supplies, equipment; and vocational student transportation costs.]

B. Other costs may be approved if deemed necessary and reasonable.

2.62 All contract costs must be reviewed, and receive prior approval from the Board.

III. Provisions of the FY 77 State Plan for Vocational Education related to vocational education under contract.

The Colorado State Plan for Vocational Education provides in section 1.8, that:

The State Board may arrange for public or nonpublic agencies or institutions to provide any portion of a program of instruction, on an individual or group basis, through a written contract. Each contract shall describe the portion of instruction to be provided by such agency or institution and incorporate the standards and requirements of vocational instruction set forth in the State Plan. Each contract shall be entered into only after the State Board has satisfactory assurance that:

Colorado (cont'd)

A. The contract is in accordance with state and local laws.

B. The instruction to be provided under contract will be conducted as a part of the vocational education programs of the state and will constitute a reasonable and prudent use of funds available under the State Plan.

C. The contract contains an assurance that federal, state and local funds paid over to the contracting agency or institution will be used only to lower the rate of, or eliminate, tuition, fees and other charges which otherwise would be collected from persons benefitting from such portion of the program.

D. Each contract shall be reviewed annually by the parties concerned.

Section 1.81-1 provides that: post-secondary instruction may be provided in private post-secondary vocational training institutions through arrangements under 1.8, where the State Board determines that such can make a significant contribution to attaining the objectives of the State Plan, and can provide substantially equivalent training at a lesser cost, or equipment and services not available in public institutions.

Section 1.81-2 provides that: "post-secondary vocational training institution" is one which meets the requirements set forth in subparagraphs (A) through (B) of sec. 108 (11) of the Act.

Section 1.82 provides that the State Board may provide vocational education under contract pursuant to 1.8, where the State Board determines that such agencies and institutions can make a significant contribution to the objectives of the State Plan, and can provide substantially equivalent training at a lesser cost, or can provide equipment and services not available in public agencies or institutions.

Colorado (cont'd)

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

The State Board for Community Colleges and Occupational Education has the authority to establish minimum standards for private trade and technical schools, including, but not limited to:
- that the school has sufficient financial resources to fulfill commitments to students and to meet obligations.
- that the school has adequate facilities, equipment, instructional materials, staff and other personnel to provide educational services to meet the stated objectives.
-that the educational and experience qualifications of administrators, instructional staff, and other personnel are such as will adequately insure that students receive educational services consistent with the stated objectives of the course,
-that the school is operated and maintained in compliance with health and safety laws,
- that the school shall not deny enrollment, or make distinction or classification on the basis of race, color, creed, national origin or sex. No school shall operate without a valid certificate of approval issued by the State Board. Any agent representing the school must aquire an agent's permit from the Board.

The Board shall have the power to grant accreditiation to schools which make application and which meet the standards of accreditation established by the State Board, which shall include at least the standards of accreditation required for recognition of an accrediting authority for private vocational schools by the USOE. Accreditation shall be voluntary. ("Private Vocational School Act of 1975", Col. Rev. Stats., art. 59, §§ 12-59-101 to -127, (Supp. 1976))

VI. Policy Analysis

State Statutes authorize the State Board to enter into contracts with the boards of private vocational schools, and the local education agencies to contract for vocational education services. The State Plan provides that the State Board may contract with public or non-public agencies and institutions, including post-secondary institutions, for vocational instruction. Thus, it appears that, in Colorado, both the State Board and LEAs are authorized to contract with private vocational training sources.

Illinois

I. State Statutes related to control of vocational education.

"All the provisions and benefits of [the Vocational Education Act] are hereby accepted by the State of Illinois" (Illinois Stats. Ann., ch. 122, §694 (Smith-Hurd 1974)). The Board of Vocational Education shall have power and it shall be its duty:

(a) To co-operate with the federal government in the administration of the provisions of the [Vocational Education Act], to the extent and manner therein provided;

(b) To promote and aid in the establishment of schools and classes of the types and standards provided for in the plans of the Board of Vocational Education, as approved by the federal government, and to cooperate with State and local school authorities in the maintenance of such schools and classes. (Illinois Stats. Ann., ch. 122, §697(a) and (b), (Smith-Hurd 1974)).

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services.

Sec. 10-22.22 of the Illinois Stats, states in part, that where in the school board's judgment the interests of the district and of the pupils therein will be best subserved by so doing, the school board may permit the pupils in the district to attend schools of other districts and may permit any pupil to attend an area secondary vocational school operated by a public school district or a public or non-public vocational school within the state approved by the state board of vocational education, and may provide free transportation for such pupils and pay the tuition to such schools. (Ill. Stats. Ann., ch. 122, (Smith-Hurd 1974) as amended, (Supp. 1976)).

Section 103-40 of the Illinois Stats., states, in part, that the Community College districts have the power to enter into contracts with any person, organization, association, or government agency for providing or securing educational services.

III. State Regulations related to contracting for vocational education services.

IV. Provisions of the State Plan for Vocational Education related to vocational education under contract.

The Illinois State Plan for Vocational Education provides

Illinois (cont'd)

in section 1.8, (vocational education under contract), subsection 1.81 that:

Post-secondary vocational instruction provided in other than public institutions may be supported only through arrangements entered into with private post-secondary vocational training institutions (pursuant to Paragraph 1.82). Where the Department of Adult, Vocational and Technical Education or local educational agency determines that such private institutions can make a significant contribution to attaining the objectives of the State Plan, and can provide substantially equivalent training at a lesser cost, or can provide essential equipment or services not available in public agencies or institutions, funding agreements may be made. For purposes of this paragraph, a "private post-secondary vocational training institution" means a private business or trade school, or technical institution, or other technical vocational school providing post-secondary education which meets the requirements set forth in subparagraphs (A) through (D) of Section 108(11) of the Act. Only institutions approved or recommended by the Department of Recognition and Supervision, Illinois Office of Education or the Department of Registration and Education may be eligible for such contracts.

Arrangements may be made for the provision of any portion of the program of instruction on an individual or group basis by public or non-public agencies or institutions (other than the Department of Adult, Vocational and Technical Education or local educational agency) through a written agreement with the Department of Adult, Vocational and Technical Education or local educational agency. Such agreements shall describe the type of instruction to be provided by an agency or institution and incorporate the standards and requirements of vocational instruction set forth in the Regulations and in this part of the State Plan. Such agreements shall be entered into only upon a determination by the Department of Adult, Vocational and Technical Education or local educational agency of satisfactory assurance that:

Illinois (cont'd)

(a) The contract is in accordance with State or local law.
(b) The instruction to be provided under agreement will be conducted as a part of the vocational education program of the State and will constitute a reasonable and prudent use of the funds available under the State Plan.
(c) The agreement contains an assurance that Federal, State and local funds paid to the contracting agency or institution will be used only to lower the rate of or eliminate tuition, fees and other charges which otherwise would be collected from persons benefitting from the program. Agreements shall be reviewed at least annually by the parties concerned. Agreements entered into by local educational agencies shall be forwarded to the Department of Adult, Vocational and Technical Education for filing with their local plan.

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

No person or corporation shall conduct a private business or vocational school without a certificate of approval from the Superintendent. Certificate applications shall contain: specific purposes of instruction; the educational and teaching qualifications of instructors; a description of physical facilities; a description of financial resources; evidence of up-to-date equipment; and evidence of adequate evaluation services. In addition, each school must commit itself to be conducted in accordance with rules, standards and regulations established by the Superintendent; and that all advertising, and solicitation will be free from misrepresentation, fraud, misleading or unfair trade practices. (Illinois Stats. Ann., §§136-153, (Smith-Hurd, Supp. 1976)).

Illinois (cont'd)

VI. Policy Analysis

State Statutes do not expressly authorize the State Board to contract with private vocational training sources. However, the broad authority granted the Board of Vocational Education appears to provide implied authority to enter into such contracts.

The State Plan provides that the Department of Adult Vocational and Technical Education may make written agreements with public or non-public agencies or institutions (other than the Department) and with private post-secondary vocational institutions approved or recommended by the Department of Recognition and Supervision, Illinois Office of Education of the Department of Registration and Education.

State Statutes appear to expressly authorize LEAs subject to certain conditions, to pay the tuition of a student attending approved private vocational schools. The State Plan indicates that LEAs may contract with approved private vocational training sources.

Iowa

I. State Statutes related to control of vocational education.

"The provisions of [the Vocational Education Act] . . . are accepted. (Iowa Code, Ann., ch. 258, §258.1(1972)).
"The State Board of Public Instruction shall constitute the board for vocational education." (Iowa Code Ann., ch. 258, §258.2 (1972)).

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services.

Any public agency of this state may enter into an agreement with one or more public or private agencies for joint or co-operative action. Appropriate action by ordinance, resolution or otherwise, pursuant to law of the governing bodies involved shall be necessary before any such such agreement may enter into force. (Iowa Code Ann., ch. 28E, § 28E.4(1972)).

Any such agreement shall specify the following:

1) its duration,
2) the precise organization, composition and nature of any separate legal or administrative entity created thereby together with the powers delegated thereto, provided that such entity may be legally created,
3) its purpose(s),
4) the manner of financing the joint or co-operative undertaking and of establishing and maintaining a budget thereto,
5) the permissable method(s) to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property,
6) any other necessary and proper matters (Iowa Code Ann., §28E. 5, (1972)).

The board of directors of each area vocational school or area community college shall:
1) determine the curriculum to be offered in such a school. If an existing private education or vocational institution within the merged area has facilities and curriculum of adequate size and quality which would duplicate the functions of the area, school, the board of directors shall discuss with the institution the possibility of entering into contracts to have the existing institution offer facilities and curriculum to students of the merged area. The board of directors shall consider any proposals submitted by the private institution for providing such facilities and curriculum. The board of directors may enter into such contracts.

Iowa (cont'd)

2) Have the power to enter into contracts and take other necessary action to insure a sufficient curriculum and efficient operation and management of the school or college. (Iowa Code Ann., §280A.23, (1972)).

III. State Regulations related to contracting for vocational education services.

The Iowa Administrative Code, ch. 26, 670-26.1(258), (1976), "Standards for Vocational Education," provides that vocational education programs carried on under the provisions of chapter 258 of the Code shall be governed by and administered pursuant to Acts of Congress accepted by said chapter, the provisions of said chapter, duly adopted rules of the federal agencies involved, and the current federal-state contracts or plans approved pursuant to said statutes and rules.

IV. Provisions of the State Plan for Vocational Education related to vocational education under contract.

The Iowa State Plan for Career Education, provides on section 1.81 that:

Post-secondary career instruction may be provided in other than public institutions where the Board of Directors of the merged area school finds that private post-secondary schools can make a contribution to attaining the objectives of the State Plan, and can provide equivalent training at reasonable cost, and do not duplicate a similar offering or diminish need for existing offerings.

The Board of Directors of the merged area school will notify all private postsecondary institutions in the area of the desire to contract for specific services.

The State Board, before approving a contract between a merged Area Board and private post high school institutions will ascertain that all offerings submitted are needed and that one curriculum does not duplicate other offerings provided by existing public or private facilities in the area, and is in accordance with state laws and State Board regulations. In determining whether duplication exists, the State Board shall consider the needs of the area, whether proposed offerings are competitive as to size, quality, tuition, and area coverage with existing public and private educational or vocational institutions within the area.

Iowa (cont'd)

After approval by the State Board, the local area board of directors may enter into a contract with the private educational institution. The contract shall contain the services to be rendered and the procedure used in reimbursement. The contract is to be reviewed each year and must have State Board approval before renewal.

Section 1.82 provides that:

Arrangements may be made for the provision of any portion of a program of instruction on an individual or group basis by public or non-public agencies or institutions (other than the State Department of Public Instruction or local educational agency) through a written contract with the State Board or a local educational agency. Such contract shall describe the portion of instruction to be provided by such agency or institution and incorporate the standards and requirements of vocation instruction as set forth in the Federal regulations and the State Plan. Such a contract shall be entered into only upon a determination by the State Board or local educational agency of satisfactory assurance that:

- the contract is in accordance with State and/or local laws,
-the instruction to be provided under contract will be conducted as a part of the career education program of the State and will constitute a reasonable and prudent use of funds available under the State Plan, and
- the contract contains an assurance that Federal, State and local funds paid over to the contracting agency or institution will be used only to lower the rate of or eliminate tuition fees and other charges which otherwise would be collected from persons benefiting from such portion of the program.

Such contract shall be reviewed at least annually by the parties concerned.

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

Iowa (cont'd)

It is unlawful for any person, firm or corporation maintaining, advertising or conducting courses of instruction to: advertise falsely, (all advertising must comply with the rules and regulations of the Federal Trade Commission); collect advanced payment of more than $150; promise or guarantee employment upon completion of the course unless offering a bona fide contract for employment. Every such corporation shall provide a continuous surety bond or $50,000. This section shall not apply to any school licensed under any other section, including cosmetology and nursing schools, or to private business schools accredited by the accrediting commission for business schools, or an acknowledged accrediting agency. The provisions of this chapter shall also not apply to trade or vocational schools if they meet either of the following conditions:

1) file a bond or have a bond filed in their behalf by a parent corporation with the superintendent of public instruction, or
2) file an annual sworn statement showing the school's (or parent corporations') net worth to be not less than 5 times the bond required.
(Iowa Code Ann., ch. 713A, §§713A.1 - .6, (1972))

VI. Policy Analysis

State Statutes do not expressly authorize the State Board to contract with private vocational training institutions. However, it appears that the general authority of the State Board may provide implied authority for such contracting. Furthermore, State Statutes authorize the Board of Directors of area vocational schools or area community colleges to contract with private education or vocational institutions. The State Plan provides that the Board of Directors of merged area schools may contract with private post-secondary institutions and that the State Board may contract with other public and non-public agencies or institutions. State statutes appear to authorize "any public agency" to enter into an agreement with private agencies for joint or cooperative action. The State Plan indicates that LEAs may contract with "non-public agencies or institutions. Thus, it appears that LEAs may have implied authority to contract with private vocational training institutions.

Kansas

I. State Statutes related to control of vocational education.

The State Board of Education is designated as the sole agency for supervision of the administration of vocational education by LEAs. (Kansas Stats. Ann., Art. 44, §72-4408, Vernon's (1972)).

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies and institutions for vocational education services.

The State Plan for Vocational Education may provide for the offering of vocational education in private vocational training institutions and non-public, non-profit institutions to the extent authorized in Title I of the Federal Vocational Education Amendments of 1968. Such provisions shall include specific safeguards against the commingling of public and private funds or moneys, but may authorize any board or board of control to enter into contracts for vocational education to be conducted in any private vocational training institution or non-profit institution. (Kansas Stats. Ann., art. 44, §72-4413(h)(Vernon's 1972)).

III. State Regulations related to contracting for vocational education services.

IV. Provisions of the FY 77 State Plan for Vocational Education related to vocational education under contract.

The Kansas State Plan for Vocational Education provides in section 1.81, in part; that post-secondary vocational education may be provided in other than public institutions only through written contracts. The State Board or LEA must determine that the institution can make a significant contribution to attaining the objectives of the State Plan, and that instruction offered is of the same standards as programs operated under the authority of the state board. All contracts must: (1) be in accordance with state and local law; (2) constitute a prudent use of funds as determined by the state board; and (3) be reviewed annually by the state board.

Kansas (cont'd)

A private post-secondary vocational training institution is defined as a school meeting the requirements of paragraphs(A) - (S) of Sec. 108(11) of the Act, and is on the approved list of the U.S. Office of Education.

Section 1.82, provides, in part, that the state board may make provisions for any portion of the vocational education program through public or non-public agencies or institutions (other than the SEA or LEA) through a written contract.

Consideration must be given to current and projected manpower needs and job opportunities in the state and to relative vocational education needs of persons specified in the State Plan, particularly disadvantaged and handicapped. Local applications will be evaluated based on percentage requirements identified in the State Plan, and the program impact of groups to be served.

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

The state board of education has jurisdiction and control over proprietary schools and shall enforce minimum standards for approval. All proprietary schools must obtain certificates of approval by meeting minimum standards, including:

- that course, curriculum and instruction are of such quality and length as may adequately achieve the stated objectives for the course;
- that schools have adequate space, equipment, instructional material and personnel;
- that schools must comply with all local, city, county, municipal, state and federal regulations (such as fire codes and building and sanitation codes);
- that the education and experience qualifications of the director, administrators, and instructors are such as may reasonably insure that students will receive training consistent with the objectives of their programs of study. ("Kansas Proprietary School Act", Kansas Stats. Ann., ch. 228, §§72-4916 to 4940 (Vernon's 1972) as amended (Supp. 1976).

Kansas (cont'd)

The Rules and Regulations of the State Board of Education, (Art. 18, secs. 91-18-24 to -141, "Rules governing the Policy and Application Procedure of the State Board of Education for Approval to Operate Proprietary Schools for Profit"), provides for regulations on: schools domiciled out-of-state; minimum standards, accreditation; exempt schools, a vocational and recreational; application for certificate of approval, contents; filing of surety bond of $20,000 as condition of approval of application; application for registration of representatives; revocations; and temporary certificates of approval.

VI. Policy Analysis

State Statutes appear to authorize the State Plan to allow for any board to provide for vocational education under contract. The State Plan provides that the State Board or LEA may make provisions for any portion of the vocational education program through written contracts with public and non-public agencies or institutions, including post-secondary institutions (but not including the SEA or LEA). Thus, it appears that, in Kansas, both the State Board and LEAs are authorized to contract with private vocational training institutions.

Michigan

I. State Statutes related to control of vocational education.

The State Board of Education is designated the State Board of control for vocational education. The Board is charged with "the duty and responsibility of cooperating with [the Office of Education]" in the administration of the Act and "is given all power necessary to such cooperation". (Mich. Comp. Laws, Ann., §§395.21 and .31)(1976)) The State Board may take "any necessary action consistent with State law" to comply with the provisions of the Vocational Education Act. (Mich. Comp. Laws Ann. §395.31 (1976)).

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services.

A local or intermediate school district board may enter into contractual arrangements which may include the leasing of school sites or portions thereof with business and industrial firms to provide secondary vocational education programs. (Mich. Comp. Laws Ann., §240.585b(1976))

III. State Regulations related to contracting for vocational education services.

The Michigan Administrative Code, states in "Reimbursement Programs of Vocational-Technical Education": Instruction under contract must meet the following criteria:

a) whenever any portion of the vocational education program under the state plan is being administered by a public or non-public agency or institution other than the state board or LEA, there shall be a written agreement between the parties. Such agreement shall describe the portion of the vocational education program to be administered by such agency or institution and incorporate those standards and requirements set forth in the state plan and prescribed by the state board which are applicable. The agreement shall be reviewed annually by the parties concerned.
b) all written agreements shall include an assurance that Federal, State, and local funds will be used only to cover those additional costs which are necessary to administer that portion of the vocational education program under the state plan which parties agreed would be administered by such an agency or institution, or to lower the rate of or eliminate tuition, fees, and other charges collected from persons benefiting from the program, or both; and that the Federal, State and local funds will

Michigan (cont'd)

not be used to cover those costs which would otherwise be covered by the institution's own resources.
c) the state board or LEA may not enter into any agreement with an agency or institution that collects tuition, fees or other charges, and which is able to cover with its own resources substantially all the necessary costs of administering that portion of the vocational education program which the state board or LEA desires to have carried out unless the agency or institution agrees to use funds allocated to it to cover the cost of reducing the rate of or eliminating tuition, fees, and other charges collected from persons benefiting from the program. (Mich. Ad. Code, R395.244, Rule 14).

The state board contracts with public school districts and other public education institutions for partial reimbursement of cost for secondary, post-secondary and adult instruction, supervision, administration and travel when standards of the state plan have been met. LEAs submit claims for reimbursement in accordance with approved contracts made early in the fiscal year concerned. (Mich. Ad. Code, R395.282, Rule 52). Reimbursements to LEAs will be made on the basis of claims submitted as supported by contract or other evidence of legal liability. (R395.283(2)) (Mich. Ad. Code, 1967, as amended in 1972).

IV. Provisions of the State Plan for Vocational Education related to vocational education under contract.

The Michigan State Plan for Vocational Education provides in sec. 1.8 (vocational education under contract), subsection 1.81, that:

a) Post-secondary vocational instruction provided in other than public institutions may be provided only through arrangements with private post-secondary vocational training institutions where the Department of Education or local educational agency determines that such private institutions can make a significant contribution to attaining the objectives of the State Plan, and can provide substantially equivalent training or can provide programs, equipment, or services not available in public agencies or institutions. Private institutions contracting to provide such instruction must meet the same standards as required of public institutions offering similar instruction. The contract must be reviewed annually.
b) Such schools must operate in accordance with the regulations for private trade and business schools as defined in Act 148 of public Acts of 1943 as amended, P.A. 1944 and Act 210 of P.A. 1967. Any contractual arrangement made with the

Michigan (cont'd)

contracting agency or institution involved must contain assurance that federal, state, and local funds paid to such agency or institution will be used only to lower the rate of or eliminate tuition fees and other charges which otherwise would be collected from persons benefiting from such portion of the program.

Section 1.82 (Other Agencies and Institutions), provides that, arrangements may be made for the provision of any portion of the porgram of instruction on an individual or group basis by public or non-public agencies or institutions through a written contract with the Department of Education or local educational agencies. Such contract shall describe the portion of instruction to be provided by such agency or institution and incorporate the standards and requirements of vocational instruction set forth in the Plan. Such a contract shall be entered into only upon a determination by the Department of Education or local educational agency of satisfactory assurance that:

a) The contract is in accordance with State or local law.
b) The instruction to be provided under contract will be conducted as a part of the vocational education program of the State and will constitute reasonable and prudent use of funds available under the State Plan, and
c) The contract contains an assurance that federal, state and local funds paid over to the contracting agency or institution will be used only to lower the rate or eliminate tuition fees and other charges which otherwise would be collected from persons benefiting from such portion of the program.
d) Matching provisions are provided for on a local or state basis so as to meet minimum requirements.
e) Such contract shall be reviewed at least annually by the parties concerned.

Michigan (cont'd)

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

All private trade and business schools must secure a license from the State Board of Education. Schools must meet the standards set by the Board on facilities, instructional procedures, personnel, business standards, and operating and instructional practices. (Mich. Comp. Laws. Ann., §§ 395.101 - .122, (1976)).

VI. Policy Analysis

State Statutes do not expressly authorize contracting with private vocational training sources. However, under the broad authority granted the State Board, it appears that implied authority exists to enter into such contracts. The State Plan provides that the Department of Education may contract with private post-secondary vocational training institutions, and with other public and non-public agencies or institutions.

State Statutes authorize local or intermediate school districts to enter into contractual arrangements with business or industrial firms to provide vocational education. The State Plan indicates that LEAs may contract with private vocational training sources.

North Dakota

I. State Statutes related to control of vocational education.

The State Board of Public School Education shall be the State Board of Vocational Education. (North Dakota Century Code, 15-20.1-02, (1976)).

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services.

The State Board "shall have authority necessary to cooperate with [the Office of Education] . . . in the administration of [the Vocational Education Act]. . . . including the following powers and duties . . . to contract with: a) any public or private institution or agency, board of trustees of any agricultural and training school, or school district of this state (North Dakota Century Code, 16-20.1-03, (1976)).

The State Board "shall reimburse approved public education from funds allocated for that purpose." (North Dakota Century Code, 15-20.1-06 (1976)). The governing body of any school district and the board of trustees of any county agricultural and training school may cooperate with the State Board in the establishment and maintenance of schools, departments, or classes giving instruction in vocational education . . ." (North Dakota Century Code 15-20.1-07 (1976)).

III. State Regulations related to contracting for vocational education services.

IV. Provisions of the State Plan for Vocational Education related to vocational education under contract.

The North Dakota State Plan for Vocational Education, 1977, provides in part 1.81 that post-secondary vocational instruction may be provided in other than public institutions where the State Board determines that private post-secondary schools can make a significant contribution to attaining the objectives of the State Plan, and can provide equivalent training at a lesser cost and does not duplicate similar or proposed program offerings. Before approving such a contract, the state board will ascertain that all courses and programs submitted are needed and that one curriculum does not duplicate similar or proposed programs, and is in accordance with state laws and state board regulations.

North Dakota (cont'd)

Section 1.82 provides, in part, that the LEA may contract with public and non-public agencies and institutions. The state board or LEA will determine that; the contract is in accordance with state and local laws, that instruction will be conducted as part of the program of the state; that federal, state and local funds will be used only to lower the rate of or eliminate tuition, fees and other charges that would otherwise be collected. Such contracts will be reviewed at least annually by the parties concerned.

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

The "Postsecondary Educational Authorization Act" (H.B. 1031, March 1977) provides, in part, that: "The state board of vocational education shall establish and require compliance with minimum standards and criteria for postsecondary educational institutions under the Act. The standards criteria shall include quality of education, ethical and business practices, health and safety and fiscal responsibility, which applicants for authorization to operate, or for an agent permit shall meet before such authority or permit may be issued. No postsecondary educational institution shall operate (unless exempted) in the state unless it has a currently valid authorization. All postsecondary educational institutions shall be accredited by national or regional accrediting agencies recognized by the U.S. Office of Education. Only upon accreditation shall an institution become eligible for a regular authorization to operate."

VI. Policy Analysis

State Statutes expressly authorize the State Board to contract with any public or private agency or institution and to reimburse such agencies for giving vocational instruction. LEAs are authorized to cooperate with the State Board in establishing and maintaining schools, departments and classes. The State Plan indicates that the State Board may approve contracts with private postsecondary institutions, and that LEAs may contract with "public and nonpublic agencies and institutions." Thus, it appears that state statutes authorize both the State Board and LEAs to contract with private vocational training sources.

Ohio

I. State Statutes related to control of vocational education.

The State Board of Education is authorized to co-operate with the U.S. Department of Health, Education and Welfare and to administer funds provided by the federal government for vocational education. (Ohio Rev. Code, ch. 3303, §3303.04 (1976)).

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies and institutions for vocational education services.

A school district may meet state vocational education standards by ". . . contract[ing] with a school licensed by any state agency established by the Revised Code which school operates its courses for contracting with public schools under standards as to staffing and facilities comparable to those prescribed by the state board of education for public schools . . ." (Ohio Rev. Code, ch. 3313, §3313.90 (1976)).

"Any public board of education may contract with any public agency, or bureau, or with any private individual or firm for the purchase of any vocational education or vocational rehabilitation service for any resident of the district under the age of 21 and may pay for such services with public funds. Any such vocational education or vocational rehabilitation service shall meet the same requirements including those for teachers, facilities and equipment as those required for public schools and be approved by the State Department of Education." (Ohio Rev. Code, ch. 3313, §33 13.91 (1976)).

The average daily membership of pupils enrolled in approved vocational classes in licensed proprietary schools may be counted pursuant to sec. 3313.90 of the Rev. Code, only where standards as to facilities and staffing are comparable, as determined by the superintendent of public instruction, to those established by the state board for public schools. (Ohio Rev. Code, ch. 3317, §3317.03 (1976)).

For pupils enrolled in approved vocational classes in licensed proprietary schools pursuant to sections 3313.90, 3313.91, and 3317.03 of the Rev. Code, a payment shall be made to each eligible school district for each full-time equivalent pupil in an amount equal to the average payment for all full-time equivalent pupils in the state for the previous year as determined by the superintendent. (Ohio Rev. Code, ch. 3317, §3317.024(M)(1976).

Ohio (cont'd)

III. State Regulations related to contracting for vocational education services.

State Standards for Vocation Education -EDb-463-02.

A school district may fulfill the statutory mandate of vocational education through any one of a combination of the following methods: (including). . .

D. Contract with a school district or with a school licensed by any state agency established by the Ohio Rev. Code and which operates in compliance with standards prescribed by the State Board for public schools . . .

IV. Provisions of the FY 77 State Plan for Vocational Education related to vocational education under contract.

The Ohio State Plan for the Administration of Vocational Education provides in section 1.81, in part, that the State Board may make provisions for vocational training through arrangements with private vocational training institutions. Such arrangements will be entered into only where such institutions can make significant contribution to attaining the objectives of the State Plan and can provide equipment or services not available in public institutions, or substantially equivalent training at a lesser cost.

The State Board will determine in advance of such contract, that: the instruction to be provided under contract will be conducted as part of the vocational education program of the state and will constitute a reasonable and prudent use of funds. Such contracts shall be reviewed annually by the parties concerned.

The contract is authorized under state law.

All contracts will include an assurance that federal and state funds paid to a contracting institution will be used only to lower the rate of or eliminate tuition, fees, and other charges that would otherwise be collected.

The instructional program will meet standards prescribed by the state board as a means to assure a quality educational program.

Ohio (cont'd)

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

The State Board of school and college registration shall issue a certificate of registration to a non-public school upon determining that the applicant has the facilities, resources, and faculty to provide the instruction it proposes to offer. The board shall promulgate standards for issuing certificates of registration. Sixty days after the Board has made public these standards, no course of instruction shall be offered, degrees or diplomas granted, or students solicited unless a certificate has been obtained. Application for certificate shall be accompanied by a surety bond. No person shall solicit students or sell any course of instruction without an agent's permit. (Ohio Rev. Code, ch. 3332, §§3332.01 - .99 (1976)).

VI. Policy Analysis

State Statutes authorize a school district to contract with a school licensed by any state agency; or any public board of education to contract with any private individual or firm for the purchase of any vocational education services. The State Plan indicates that the State Board may make provisions for vocational training through arrangements with private vocational schools, but does not refer to LEA contracts with private vocational training sources. However, state statutes appear to authorize such contracting by both the State Board and LEAs.

Pennsylvania

I. State Statutes related to control of vocational education.

The State Board of Education is designated the State Board for Vocational Education and is "invested with powers to administer this article. [Article XVIII Vocational Education]"(24 Penn. Stats., §18-1801(1),(1975))

"In carrying out the provisions of this act, the State Board for Vocational Education shall provide for vocational schools or classes, in accordance with the State Plan for Vocational Education approved by [the Office of Education]". (24 Penn. Stats., §18-804,(1975))

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services.

An area vocational-technical board, "shall have the authority and its duty shall be . . . (14) to make contracts with counties, cities, boroughs, towns, school districts, community colleges, public and private agencies, quasi-public agencies, non-profit corporations . . . or other persons." (24 Penn. Stats. §18-1850.1(14),(1975))

State statutes do not expressly authorize LEAs to contract with private vocational training sources. However, Op. Atty Gen. No. 21,(1974) provides that a school district may contract with a private non-religious school for vocational education programs; and pupils attending such a program are enrolled in public school for average daily membership purposes and may be included for reimbursement computations.

III. State Regulations related to contracting for vocational education services.

State regulations governing vocational education appear to authorize the use of "auxiliary agencies" for vocational instruction. 22§2.14 of the Pennsylvania Administrative Code provides "(a) In planning for and establishing various programs of vocational-technical education, school districts, area vocational-technical school boards, and community colleges shall consider all practical avenues to accomplish the desired training and education in order to determine what will best meet the needs of the community or institution or both.

"(b) Such planning shall include, insofar as is practical, consideration of flexible scheduling methods, leasing of facilities, and contracting for educational services from

Pennsylvania (cont'd)

private contractors. Where private contractors are used, such contractors shall be licensed by the appropriate licensure board, be housed in facilities approved by the Department of Labor and Industry, provide a curriculum approved by the appropriate governing board that is engaging the contractor, and shall employ properly certified teachers where applicable."

IV. Provisions of the State Plan for Vocational Education related to vocational education under contract.

The Pennsylvania State Plan for the Administration of Vocational Education, Part I, FY 77, provides in section 1.8 that vocational instruction may be offered under contract with the State Board or LEA with the following provisions:

a) each contract is in writing;
b) the contract incorporates applicable standards and requirements;
c) the contract is in accordance with state and local laws;
d) the instruction under contract is conducted as part of the vocational education program of the state;
e) the contract constitutes a reasonable and prudent use of funds;
f) contracts are reviewed annually by the parties concerned.

Section 1.81 provides that the Department of Education may contract with private post-secondary vocational institutions to conduct approved vocational-technical programs. The Department of Education may also approve local education agency plans to provide vocational-technical education in private vocational institutions, provided; that public facilities are not available to the LEA and that the private institution can make a significant contribution to the objectives of the state plan. The contract or plan must be fully documented to show that the private institution can provide substantially equivalent training at a lesser cost, or that it can provide equipment or services that are not available in public institutions.

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

No private trade school may operate without a license from the State Board of private trade schools. A license may be revoked if the Board finds that:

(1) the applicant has failed to maintain or provide premises,

Pennsylvania (cont'd)

equipment or conditions which are adequate, safe and sanitary;
(2) the applicant has used false or misleading advertising;
(3) the licensee is employing teachers, supervisors, or administrators who have not been approved by the Board;
(4) the licensee has failed to maintain adequate standards of instruction; or
(5) has failed to maintain adequate financial resources.
(24 Penn. Stats., §§1725.1 - .11, (1964).

No private business school shall operate without a license from the State Board of Private Business Schools. The same minimum standards as above shall apply. (24 Penn. Stats., ch. 11, §§2751-2760 (1964)).

Regulations

22 Pa. Ad. Code, §§71.1 - .122 (Private Business Schools), provides for the following laws to be applicable to private business schools.

(1) Fictitious Name Act, (act of May 24, 1945, P.L. 967 as amended (54 P.S. §28.1)
(2) Fire and Panic Regulations, (35 P.S. §12.21)
(3) Misrepresentation, (18 P.S. §4857) and(71 P.S. §279.2)
(4) Restraing of Unlicensed Activities, (71 P.S. §1036.1)
(5) Use of Names in Title, (24 P.S. §24.23)

These regulations include standards for licenses and approval including: application for school license or approval, teacher qualifications, student fees (including refunds), school plant, administration, instructional requirements, advertising and agents. Secs. 91.1 - .118 are the regulations for private trade schools, and include the same standards as above.

VI. Policy Analysis

State statutes do not expressly authorize the State Board to contract with private vocational training sources. However, it appears that the general authority of the State Board provides implied authority to enter into such contracts.

State statutes do expressly authorize LEAs to enter into such contracts. However an opinion of the Attorney General indicates that school districts may contract with private non-religious schools for vocational education programs. State regulations appear to authorize such contracting, but contain certain standards that private contractors must meet.

Pennsylvania (cont'd)

The State Plan provides that the State Board or LEA may contract to provide vocational instruction. The Department of Education may contract with private post-secondary schools, or approve LEA plans to provide vocational education under contract with private vocational schools.

Puerto Rico

I. Commonwealth Statutes related to control of vocational education.

A Commonwealth Board for Vocational and Technical Education has "full and complete authority and power to cooperate with [the Office of Education] in the administration of the provisions of [the Vocational Education Act] (Laws, Puerto Rico, T. 18, ch. 23, §562 (1973)).

II. Commonwealth Statutes or Commonwealth Constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services.

The Board "shall have full and complete authority and power . . . to "designate such schools, departments or classes as may be entitled to participate in the benefit of moneys received from the appropriations made under said acts as in its judgment and discretion will best serve the interests of vocational education in Puerto Rico and carry out the spirit, purposes and provisions of the [Act]. . ." (Laws, Puerto Rico, T. 18, ch. 23, §562 (1973)).

III. Commonwealth Regulations related to contracting for vocational education services.

IV. Provisions of the FY 77 State Plan for Vocational Education related to vocational education under contract.

There is no section 1.8 (vocational education under contract), in the Puerto Rico State Plan for Vocational Education.

V. Commonwealth Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

VI. Policy Analysis

Commonwealth Statutes do not expressly authorize contracting with private vocational training sources. However, the general powers of the Board (the LEA) appear to provide it with implied authority to enter into such contracts. The FY 1977 State Plan has no provision for vocational education under contract.

Texas

I. State Statutes related to control of vocational education.

The State Board of Education also serves as the State Board for Vocational Education (V.T.C.A., Ed. Code §11.24(1975)). The State Board for Vocational Education shall have the authority to allocate funds appropriated by the legislature and funds of the U.S. government received by the state of Texas under the Vocational Education Act of 1963, as amended. Only institutions and programs approved by the State Board of Education or the Coordinating Board, Texas College and University System, will be eligible for the distribution of such funds. (V.C.T.A., Ed. Code, §31.40, (Supp. 1976)).

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services.

The board of trustees of a school district may contract with a public or private post-secondary educational institution or trade or technical school which is regulated by the state, to provide vocational classes for students in the district. Any agreement entered into under this section shall be subject to the rules and regulations of the State Board of Vocational Education and the cost to the state shall not exceed the cost that would result if the classes were operated by the school district. Instructors, instructional materials and equipment utilized in the classes shall be subject to the approval of the Central Education Agency. Instructors teaching in private schools under contract shall be eligible for the same in-service teacher education opportunities provided by the state for public school teachers. (V.T.C.A., Ed. Code, ch. 21 §21.1111 (1972)).

III. State Regulations related to contracting for vocational education services.

The Policies of the Texas State Board of Education provide in §3241.2 that "School districts which, because of limited enrollments, tax resources, or facilities, are unable to offer appropriate vocational education in all occupational areas needed, may enter into contracts with other public school districts, public or private post-secondary institutions, and trade and technical schools to provide vocational education for students in the school district, provided that the cost to the state shall not exceed the cost that would result if the classes were operated by the school district itself. The contracts shall be executed in accordance with administrative procedures established by the Commissioner of Education and approved by the State Board for Vocational Education."

Texas (cont'd)

IV. Provisions of the FY 77 State Plan for Vocational Education related to vocational education under contract.

The Texas State Plan for Vocational Education provides in section 1.81, in part, that the state board may enter into agreements or arrangements with private post-secondary institutions regulated by the state, subject to the following provisions:

(1) the program is operated as a part of the state vocational education program in accordance with the same standards and under the supervision of the public education institution responsible for the expenditure of public funds;
(2) the contract is in accordance with state and local law;
(3) the institution can provide substantially equivalent programs, services and activities at a lesser cost, or ones that are not available locally in public agencies or institutions;
(4) contracts are reviewed at least annually.

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

No proprietary school shall maintain, advertise, or solicit courses of instruction without obtaining a certificate of approval from the Commissioner of Education. It is the duty of the Commissioner to enforce minimum standards for approval as adopted under policies and regulations. ("Texas Proprietary School Act," V.T.C.A., Ed. Code, §§32.01 to .25, (1975)).

VI. Policy Analysis

State Statutes do not expressly authorize the State Board to contract with private vocational training institutions. However, it appears that the general authority of the State Board may provide it with implied authority to enter into such contracts. The State Plan indicates that the State Board may enter into agreements with private post-secondary institutions regulated by the state.

State Statutes authorize the board of trustees of any school district to contract with a public or private post-secondary education institution or trade or technical school regulated by the state for vocational classes. However, State Board of Education policy appears to restrict this authority to LEAs which "because of limited enrollments, tax resources, or facilities, are unable to offer appropriate vocational education in all occupational areas needed . . ." (§3241.2)

Virgin Islands

I. Statutes related to control of vocational education.

The Virgin Islands Board for Vocational Education shall be the sole agency for the administration of vocational programs and federal funds for vocational education. (V.I. Code Ann. T. 17, ch. 23, §262, (1967)).

II. Statutes related to authority to contract with non-public agencies or institutions for vocational education services.

"The Government of the Virgin Islands accepts the provisions of the [Vocational Education Act]" (V.I. Code Ann., T. 17, ch. 23, §261(1967)).

"The Virgin Islands Board for Vocational Education . . . shall (1) cooperate with the Office of Education . . . in the administration of all Acts of Congress relating to vocational education, and administer all provisions of this Code relating thereto, as well as any other legislation pursuant thereto enacted by the Legislature; (2) approve plans for cooperating with the Federal Government in carrying out any and all phases of the vocational education program in which it may find cooperation to be desirable; . . ." (V.I. Code Ann., T. 17, ch. 23, §262 (1) and (2),(1967)).

III. Regulations related to contracting for vocational education services.

IV. Provisions of the State Plan for Vocational Education related to vocational education under contract.

The State Plan for Vocational Education (FY 77), provides in section 1.8, that the State Board may provide for vocational instruction in private post-secondary institutions only if the following conditions are met.

1). A written contract describing the portion of instruction to be provided;
2). Contract incorporates applicable standards and requirements;
3). Contract is in accordance with State law;
4). Instruction is conducted as part of the State program under the supervision of the State Board;
5). Contract constitutes a responsible and prudent use of funds;
6). Contracts are renewed annually;
7). Contract contains an assurance that funds will be used only to lower the rate of or eliminate tuition, fees or other charges that would otherwise occur;
8). A declaration that the instruction can substantially provide equivalent training at a lesser cost.

Section 1.82 provides that the State Board may make contracts with other agencies or institutions using the guidelines of 1.81.

Virgin Islands (cont'd)

V. Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

VI. Policy Analysis

The Code does not expressly authorize the State Board (the LEA) to contract with private vocational training sources. However, it appears that the general authority of the State Board may provide it with implied authority to enter into such contracts. The State Plan provides that the State Board may contract with private post-secondary institutions, and other agencies or institutions.

Washington

I. State Statutes related to control of vocational education.

The Commission for Vocational Education shall be the sole agency for the receipt and allocation of federal funds in accordance with the state plan. The supervision of the state plan shall be carried out by the Commission; however, daily administration of the state plan shall be primarily the responsibility of the Superintendent of Public Instruction and the State Board for Community College Education. (Rev. Code Wash., ch. 28C.04, §28C.04.040(3), (1976))

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services.

"The commission is authorized to promulgate such rules and regulations as are necessary to comply with the intent of this chapter . . ." (Rev. Code Wash., §28C.04.060, (1976))

III. State Regulations related to contracting for vocational education services.

The Washington Administrative Code, Sec. 490-40A-010, provides: (1) In the development of vocational education programs, services, and activities, the Commission for Vocational Education may enter into cooperative arrangements with: (a) Other agencies, organizations, and institutions which are concerned with manpower needs and job opportunities, such as institutions of higher education, and model city, business, labor, and community action organizations.

(2) Such agreements should include such items as identification of responsible personnel, and plans for implementation, review, and evaluation. Copies of any ensuing agreement between the Commission and other agencies, organizations and institutions shall be submitted by the Commission for filing with the State Plan.

(3) It is anticipated in all situations in which vocational education services will be contracted for, that a written agreement will cover the services to be rendered and that this agreement will include all the necessary information that pertains to that precise service. Such contract shall describe the portion of instruction set forth in the regulations and the State Plan. Such a contract shall be entered into only upon satisfactory assurance that: (a) The contract is in accordance with state or local law; and (b) The instruction to be provided under contract will be conducted as a part of the vocational education program of the state and will constitute a reasonable and prudent use of funds available under the State Plan; (c) Such contract

Washington (cont'd)

shall be reviewed at least annually by the parties concerned.

Section 490-40A-070 provides that:

Arrangements may be made for the provision of any portion of the program of instruction on an individual or group basis by non-public agencies or institutions through a written contract with the State Board for Community College Education or the local school district with the approval of the Superintendent of Public Instruction. Such contract shall describe the portion of instruction and services to be provided by such agency or institution, and shall incorporate the standards to be met. Such contract shall be entered into only upon a determination by the State Board for Community College Education or the local school district of satisfactory assurance that: (1) The contract is in accordance with state or local law; and (2) The instruction to be provided under contract will be conducted as a part of the vocational education program of the State, and will constitute a reasonable and prudent use of funds available under the State Plan; (3) The State Board for Community College Education or the Superintendent of Public Instruction has determined that such private institutions can make a significant contribution to attaining the objectives of the State Plan, and can provide substantially equivalent training at a lesser cost, or can provide equipment or services not available in public agencies or institutions; (4) Such contract shall be reviewed at least annually by the parties concerned.

IV. Provisions of the State Plan for Vocational Education related to vocational education under contract.

The Washington State Plan for Vocational Education, (FY 77), section 1.81 provides in part, that the vocational training may be provided by private post-secondary vocational training institutions, through written contracts with the State Board for Community College Education or the local district, with the approval of the Superintendent of Public Instruction. Such contracts shall describe the portion of instruction and services to be provided and shall incorporate standards to be met.

Washington (cont'd)

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

No proprietary school may offer a course of instruction without first registering as a proprietary school with the Director of the Division of Professional Licensing of the Department of Motor Vehicles. Each proprietary school shall: furnish each student applicant with the descriptions of course and schedule of tuition, and notify each student of his/her right to cancel; adhere to the tuition refund schedule presented in published form; comply with all applicable state and local laws, and ordinances; refrain from using false, misleading or deceptive advertising; upon satisfactory completion of training by the student to furnish a certificate of completion (on request).

It is declared to be an unfair act or practice or unfair method of competition in the conduct of trade or commerce for the purpose of the application of the Consumer Protection Act (ch. 19.86 RCW), for any proprietary school to violate RCW 18.82 or to offer a course of instruction which cannot reasonably be expected to satisfactorily train or prepare the average student for the field of endeavor for which it purports to train them. In considering whether a course of instruction could reasonably be expected to train the average student, the following factors shall be considered by the court: (a) the equipment, materials and course content furnished, (b) the qualifications, training and experience of instructors, (c) and the normal and usual requirements of training and experience prevailing in the particular field of endeavor. This chapter shall not apply to schools accredited by the applicable national or regional accrediting agency recognized by either the USOE, State Superintendent of Public Instruction, State Board of Education, or State Board for Vocational Education. (Rev. Code Wash., ch. 18.82, §§18.82.010 to .920, (1976)).

VI. Policy Analysis

State Statutes provide the Commission for Vocational Education with broad authority regarding the State Plan. State Regulations and the State Plan indicate that the State Board for Community College Education may contract with private post-secondary vocational training institutions.

Washington (cont'd)

Pursuant to the Commission's broad authority to promulgate "such rules and regulations as may be necessary", state regulations provide that, with the approval of the Superintendent for Public Instruction, local school districts may contract with nonpublic agencies or institutions. The State Plan provides that, subject to such approval, local school districts may contract with private vocational training institutions.

Wyoming

I. State Statutes related to control of vocational education.

The State Board of Education is designated as [the State Board of Vocational Education] . . . to accept the provisions of [the Vocational Education Act]. . . and to administer or supervise the administration of any state plan . . . ." (W.S. 21.1-237(a)(Supp. 1975)).

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services.

Section 21.1-28(c) provides that the board of trustees in any school district, "establishing and maintaining a comprehensive program of vocational . . . education under this article . . . may: . . . (c) do all things necessary to promote the purposes of this article". Section 21.1-27(c) provides that the board of trustees may enter into agreements with any public or private institution or agency, person, or corporations for the performance of acts for the furnishing of services or facilities by or for the school district. (W.S. (Supp. 1975)).

III. State Regulations related to contracting for vocational education services.

IV. Provisions of the State Plan for Vocational Education related to vocational education under contract.

The Wyoming State Plan for the Administration of Vocational Education (FY 77), section 1.82, provides, in part, that arrangements may be made for the provision of any portion of the program of instruction by public or non-public agency or institution, (other than the State Board or LEA), through a written contract with the State Board or LEA. Such contracts shall describe the type of instruction to be provided and incorporate standards and requirements of occupational instruction set forth in the State Plan.

Criteria:

1). contracts must be in accordance with State and local law,
2). instruction must be conducted as part of the occupational education program of the State and will constitute a prudent use of funds,
3). contract will contain an assurance that funds will be used only to lower the rate of or eliminate tuition, fees, or other charges that would otherwise be collected.

Wyoming (cont'd)

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

The State Board of Education may: license all trade, correspondence, technical, vocational, business or other nonparochial schools: establish minimum standards for such schools: and provide for the investigation and evaluation of such schools.

No school or agent or a school may operate without a license. Ch. 12, 21.1-191 through 121.1-197, (Supp. 1975)).

VI. Policy Analysis

State Statutes do not expressly authorize the State Board to contract with private vocational training sources. However, it appears that the general authority of the State Board may provide implied authority for such contracting. The State Plan provides that the State Board may contract with public or non-public agencies or institutions.

State Statutes do not expressly authorize LEAs to contract with private vocational training sources. However, it appears that the authority "to do all things necessary" and the authority to enter into agreements with private organizations for services may provide implied authority for LEAs to enter into such contracts. The State Plan indicates that LEAs may contract with a nonpublic agency or institution for vocational instruction.

B. Neither the State Board Nor LEAs Appear to Have Authority to Contract With Private Vocational Training Sources

States or Territories

In This Category

1. District of Columbia
2. Georgia
3. Kentucky
4. Mississippi
5. Nebraska
6. New Jersey
7. South Carolina

District of Columbia

I. State Statutes related to the control of vocational education.

D.C. Code 31-1717 (Supp. III, 1976) transfers the powers and duties of the Vocational Board to the Board of Trustees of the University of the District of Columbia.

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services.

D.C. Code 31-1715 (Supp. III, 1976)) defines the duties and powers of the Board of Trustees and provides in Subsection (c) that the Trustees may enter into negotiations and binding contracts pursuant to Council regulations regarding contracting with the governments of the U.S. and the District of Columbia and other public and private agencies to render and receive services.

D.C. Code 31-1735(b)(Supp. III, 1976) provides that the Board of Education [the LEA] may, pursuant to Council regulations, enter into contracts for services with public and private agencies.

The District of Columbia Council has not promulgated contracting regulations for either the Board of Trustees or the Board of Education.

III. State Regulations related to contracting for vocational education services.

IV. Provisions of the FY 77 State Plan for Vocational Education related to vocational education under contract.

The D.C. State Plan for Vocational Education states, in section 1.8 (Vocational Education Under Contract), in part; that the State Board, within the availability of funds, will provide vocational education under contract with agencies and institutions other than the LEA. Contracts will: describe the portion of instruction to be provided; incorporate the standards and requirements of vocational instruction in the State Plan; be in accordance with D.C. law and rules and regulations of the State Board; be reviewed at least annually by the parties concerned.

Section 1.81 states, in part, that the Board will provide training through arrangements with private vocational training institutions; where such can make significant contributions to the objectives of the State Plan, can provide substantially equivalent training at a lesser cost, or can provide equipment of services not available in public institutions -- provided that

District of Columbia (cont'd)

such private institution appears on the list of approved institutions meeting the requirements of the Act, as maintained by the U.S. Office of Education. Instruction provided will be conducted as part of the vocational education program of the District of Columbia; contracts will be in accordance with D.C. law, and will be reviewed at least annually by the parties concerned.

Section 1.82 states, in part, that the State Board will arrange with other public or non-public agencies and institutions such as labor unions, and business and industrial firms, to provide training through a written contract.

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

The "Education Licensure Commission Act of 1976", provides, in part, (sec. 3), for the creation of the Educational Institution Licensure Commission, which shall license private educational institutions, (including private elementary, secondary, middle schools, academies, junior colleges, colleges, universities, and proprietary schools), and their agents; ensure authenticity and legitimacy of private educational institutions; and provide and promulgate standards, criteria, rules and regulations for such schools. D.C. Code 29-101 et. seq. (Supp. III 1976).

VI. Policy Analysis

Although both the Board of Trustees and the Board of Education may, pursuant to Council regulations enter into contracts for services with private organizations, the District of Columbia Council has not promulgated such contracting regulations. Thus, it appears, based on the above statutory provisions, that neither Board may presently enter into contracts.

Georgia

I. State Statutes related to control of vocational education.

The State Board of Education shall maintain a comprehensive program of career, occupational, and vocational education. (Georgia Code Ann., §32-611a, (1976)).

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services.

Section 89-903 states, in part that the powers of all public officers are defined by law, and all persons must take notice thereof. The public may not be estopped by the acts of any officer done in the exercise of power not conferred. (Georgia Code Ann., §89-903, (1976)).

III. State Regulations related to contracting for vocational education services.

IV. Provisions of the FY 77 State Plan for Vocational Education related to vocational education under contract.

The Georgia State Plan for the Administration of Vocational Education provides in section 1.81 that contracts with private institutions are not permissible under Georgia law as indicated by the opinion of the attorney general, which interprets Georgia Code Ann., §89-903 and other statutory provisions. (The opinion is not included with the State Plan.)

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

No proprietary school may operate without a certificate from the board of education. Schools accredited by an accrediting agency recognized by the USOE are considered in compliance with minimum standards, including: that the education and experience qualifications of directors, administrators, and instructors are such as may reasonably insure that the student will receive training consistent with the objectives of their program of study; that courses, curriculum, and instruction are of such quality as may adequately achieve the stated objectives of the instruction; that schools comply with all local, city, county, municipal, state and federal regulations, such as fire codes, building and sanitation codes; and that the school is financially stable and capable of fulfilling its commitments. ("Georgia Proprietary School Act", Georgia Code Ann., ch. 32-23B, §§32-2301b to -2321b, (1976)).

Georgia (cont'd)

VI. Policy Analysis

There is no state statute which specifically authorizes the expenditure of funds for vocational education under contract. Therefore, according to the Attorney General's Opinion, expressed in the State Plan, under §89-903 of the Georgia Code Ann. such contracting is not permissible.

Kentucky

I. State Statutes related to control of vocational education.

The State Board of Education is vested with the authority to carry out the purposes of the program of vocational education and the provisions of acts of Congress. (Ky. Rev. Stats., §163.030, (1976)).

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services.

The Kentucky State Constitution provides in Section 18-4, that:

". . . any sum which may be produced by taxation or otherwise for the purposes of common school education, shall be appropriated to the common schools, and to no other purpose."

III. State Regulations related to contracting for vocational education services.

IV. Provisions of the FY 77 State Plan for Vocational Education related to vocational education under contract.

In The Kentucky State Plan for Vocational Education, section 1.8 (vocational education under contract), subsection 1.81 (private post-secondary vocational training institutions), is the following Attorney General's Opinion:

"...Section 18-4 of the State Constitution provides in part "...any sum which may be produced by taxation or otherwise for the purposes of common school education, shall be appropriated to the common schools, and to no other purpose." In the case of Sherrard vs. Jefferson County Board of Education, [294 Ky.469, 171 S.W. 2d 963 (1942)] the Court of Appeals defined the term "common schools" to mean public schools maintained by the state at public expense. KRS.ch. 156 places the control and management of the common schools under the auspices of the State Board of Education. Consequently, even though vocational schools are not common schools in the strict sense of the word, it is our opinion that it is at least a quasi-common school within the meaning

Kentucky (cont'd)

of secs. 18-4 and 180 of the State Constitution. Therefore, the tax monies appropriated must be used to provide instruction in the vocational schools which are under the direct supervision and control of the State Bd. of Ed. That is, the state school monies may not be used to contract with private institutions for vocational training, but must be used to provide instruction by public employees directly under the control and supervision of the State Bd. of Ed. See also Butler vs. United Cerebral Palsy of Northern Ky, Inc., Ky 353 sw 2d 203 (1961)." OAG 64-414, May 22, 1964.

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

No person shall conduct, operate, maintain or establish a proprietary school unless holding a valid current license from the State Board for Proprietary Education. No person shall solicit person(s) in the state to enroll or attend any such institution unless holding a valid license as an agent of the school for which he is soliciting. Applications for an agent's license shall be accompanied by a sufficient surety bond as required by the Board, but not less than $5,000. No proprietary school shall be granted approval if it discriminates on the basis of race, color or creed, and until it is in substantial compliance with the following minimum standards:
1) that the instructional quality and content of the course shall be adequate to provide reasonable education and training,
2) that the school has adequate space, equipment, instructional materials, and instructor personnel to provide training of good quality.
3) that the education and experience qualifications of directors, administrators, supervisors, and instructors is such as to provide quality instruction,
4) that a copy of the course outline and a schedule of tuition be furnished each student applicant prior to enrollment,

Kentucky (cont'd)

5) that upon satisfactory completion of training, the student shall be awarded a diploma, certificate or other appellation by the school which indicates courses completed,
6) that adequate records be maintained and available for inspection,
7) that the school is operated in compliance with all local, city, and county ordinances and state law relating to safety and health,
8) that the school is financially sound and capable of fulfilling its committments,
9) that the chief executive officer, director and owners are of good moral character as determined by the board,
10) that the school adheres to a published tuition refund schedule.

The board shall have the power to investigate, appraise and evaluate from time to time any proprietary school in the state.

(The definition of proprietary school does not include a school approved by, or a course of instruction sponsored by the Board of Barbering (K.R.S. 317.340, Ky. Board of Hairdressers and Cosmetologists (K.R.S. 317.480), Ky. Board of Nursing and Education (K.R.S. 314.121), and the Ky. Board of Embalmers and Funeral Directors (K.R.S. 316.170)). (Ky. Rev. Stats., §§165A. 320-.400, (1976)).

VI. Policy Analysis

The State Plan includes reference to an Attorney General's Opinion which indicates that, based on the State Constitution and case law, state school monies may not be used to contract with private institutions for vocational training.

Mississippi

I. State Statutes related to control of vocational education.

The State Board of Education shall constitute the State Board for Vocational Education. (Miss. Code Ann., §37-31-3, (1972)).

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services.

The Mississippi Constitution, in Art. 8, sec. 208, states that "No religious or other sect or sects shall ever control any part of the school or other education funds in this state, nor shall any funds be appropriated toward the support of any sectarian school, or to any school that at the time of receiving such appropriation is not conducted as a free school."

III. State Regulations related to contracting for vocational education services.

IV. Provisions of the FY 77 State Plan for Vocational Education related to vocational education under contract.

The Mississippi State Plan for Vocational Education provides in sec. 1.8, (Vocational Education Under Contract), subsection 1.81 (Private Post-Secondary Vocational Training Institutions) that: this section will not apply in that the Mississippi Constitution of 1890 prohibits the state from contracting with private agencies for the conduct of education programs where state money is involved.

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

No proprietary school shall offer a course of instruction unless a certificate of registration is obtained from the Commission of School and College Registration.

The Commission may revoke, suspend, or cancel a certificate for any one or combination of the following: presentation to students of misleading, false or fraudulent information relating to the course of instruction, or employment opportunities;

Mississippi (cont'd)

failure to maintain premises or equipment in safe, sanitary condition; failure to maintain adequate financial resources; or violation of commitments made in application for certification. (Miss. Code Ann., ch. 60, §§75-60-1 to -41. (1972)).

VI. Policy Analysis.

The State Plan indicates that contracting with private agencies for education programs where state money is involved is prohibited by the State Constitution.

Nebraska

I. State Statutes related to control of vocational education.

The State Board of Education is designated as the State Board of Vocational Education. The Board is authorized to cooperate with the U.S. Office of Education and to administer funds provided by the federal government for vocational education. (Neb. Rev. Stats., §79-1429, (1974)).

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services.

Nebraska Constitution, Art. VII, sec. 11, (as amended by LB 666 passed 11/2/76), states that "Notwithstanding any other provision in the Constitution, appropriation of public funds shall not be made to any school or institution of learning not owned or exclusively controlled by the state or a political subdivision thereof; provided, that the legislature may provide that the State or any political subdivision thereof may contract with institutions not wholly owned or controlled by the state or any political subdivision to provide for educational or other services for the benefit of children under the age of 21 years who are handicapped, as that term is from time to time defined by the Legislature, if such services are nonsectarian in nature. All public schools shall be free of sectarian instruction." LB 443 (1977) implementing LB 666 (1976) [see above], and amending §43-642 (Rev. Stats. Supp. 1976); provides in part; that special education programs may be provided by any school district, by contracting with another school district or servicing agency. . . Provided, that only nonsectarian services shall be included for approval by the State of Nebraska.

Art. III, Section 25 of the Nebraska Constitution provides that:

"No allowance shall be made for the incidental expenses of any state officer except the same be made by general appropriation and upon an account specifying each item. No money shall be drawn from the treasury except in pursuance of a specific appropriation made by law, and on the presentation of a warrant issued as the legislature may direct, and no money shall be diverted from any appropriation made for any purpose or taken from any fund whatever by resolution."

III. State Regulations related to contracting for vocational education services.

IV. Provisions of the FY 77 State Plan for Vocational Education related to vocational education under contract.

Nebraska (cont'd)

The Nebraska State Plan for Vocational Education provides, in section 1.8 (Vocational Education under Contract), subsection 1.81 (Private Post-secondary Vocational Training Institutions) that:

The State Board is prohibited by the Constitution of the State of Nebraska from contracting with private vocational training institutions.

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

The State Board of Education may accredit the courses of instruction offered by a proprietary school, if it meets the following criteria:

a) courses, curriculum, and instruction are consistent in quality, content, and length with similar courses in public schools, other private schools and the recognized standards of the state.
b) the institution has adequate space, equipment, instructional material, and personnel to provide training of good quality.
c) the educational and experience qualifications of administrators and instructors are adequate,
d) a copy of the course outline and tuition is furnished each student upon enrollment,
e) upon satisfactory completion of the training the student is given a certificate,
f) compliance with all local, city, municipal, and state regulations, (fire,building and sanitation codes)
g) that the institution does not use false or misleading advertising,
h) the institution has been in operation for not less than the 24 months preceding the application for accreditation.

No privately owned correspondence, business or trade school shall operate without a license from the State Board of Education. (Neb. Rev. Stats., §§79-1812 to -1824, (1974)).

Nebraska (cont'd)

VI. Policy Analysis

An opinion of the Office of the State Attorney General has considered (a) the Nebraska Constitution, art. III, sec. 25 which provides that no money may be drawn from the Treasury except with specific appropriations; (b) a statutory provision (governing vocational education and federal aid) establishing the State Treasurer as custodian of funds. (R.S. 79-1420); and (c) has pointed out that no specific appropriation bill authorizing money from the treasury to pay for the training of persons through arrangements with private schools exists, (except for handicapped). The opinion concluded that: "Therefore, the State Department of Education has no authority to pay for the training of persons under the Act through arrangements with private vocational schools." OAG, Aug. 23, 1965.

New Jersey

I. State Statutes related to control of vocational education.

The State Board of Education is designated the State Board for purposes of cooperation with the U.S. Office of Education in administering federal funds for vocational education. (N.J. Stats. Ann., 18A:59-f, (1968))

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services.

III. State Regulations related to contracting for vocational education services.

§7:43-3.1 of the New Jersey Administrative Code governs program arrangements for vocational instruction under contract and repeats almost verbatim the language of the federal vocational education regulations authorizing vocational instruction under contract. (45 C.F.R. §102.5 (1976)).

IV. Provisions of the FY 77 State Plan for Vocational Education related to vocational education under contract.

The New Jersey State Plan for the Administration of Vocational Education provides in section 1.81 that, the State Board may enter into contractual arrangements with private post-secondary training institutions or agencies when it is determined that such can provide a significant contribution to attaining the objectives of the State Plan, and can provide substantially equivalent training at a lesser cost, or can provide equipment or services not available in public institutions, and as provided in Reg. S.P.P., Sec. 102.5(b) and P.L. 90-576, Sec. 122(a)(7).

Section 1.82 provides that the State Board may provide vocational education under contract with other agencies and institutions when it is ascertained that regular vocational programs are not adequately preparing individuals for gainful employment as semi-skilled or skilled workers or technicians or sub-professionals in recognized occupations and in reward merging occupations, or to prepare individuals for enrollment in advanced technical education programs. The extent and manner by which the State Board will provide vocational education under contract when it has been ascertained as necessary, shall be in accordance with the Federal Regulations or any regulations which the State Board deems essential to maintain the quality and standards

New Jersey (cont'd)

of vocational education in the State.

When an LEA is responsible for such contracts, assurance must be provided that:

a) contract is in accordance with State and local law;
b) instruction will be conducted as part of the State program and will constitute a reasonable and prudent use of funds;
c) contract be renewed annually by the State Board and the contracted agency(s).

When this condition is ascertained the manner by which such arrangements are executed shall be determined by the State Board.

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

No corporation shall furnish instruction until it shall have filed a certified copy of its certificate of incorporation with the State Board of Education, and obtains a license from the Board. No institution shall confer a degree without first submitting the basis and conditions of such to the State Board, and receives approval. (N.J. Stats. Ann., ch. 20, §§18:20-5 to -16, (1968)).

VI. Policy Analysis

State Statutes do not appear to provide either express or implied authority for the State Board to contract with private vocational training sources. The State Department of Education has indicated that an Attorney General's opinion provides that the lack of authorizing legislation prohibits such contracting. (Both the State Department of Education and the Office of the Attorney General have indicated that this opinion is not available for dissemination.) Despite this opinion, the State Plan provides that the State Board may contract with private post-secondary institutions, and other agencies and institutions. As a result of the apparent absence of express or implied authority for such contracting and the apparently prohibitive opinion of the Attorney General, we have placed New Jersey in a category which indicates that neither the State Board nor LEAs appear to have authority for such contracting. We cannot reconcile the apparent absence of statutory authority and the Attorney General's opinion with either the provisions §6:43-3.1 of the New Jersey Administrative Code or the State Plan.

South Carolina

I. State Statutes related to control of vocational education.

The State Board of Education is designated the State Board for Vocational Training. (Code of Laws of South Carolina, §21-691 (1972))

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services.

Art. XI, §4 of the South Carolina Constitution which prohibits direct aid to religious or other private educational institutions, provides that no money shall be paid from public funds nor shall the credit of the State or any of its political subdivisions be used for the direct benefit of any religious or other private educational institution (as amended 1973).

The statutory provision governing the authorized uses of vocational education funds does not refer to contracting with private vocational training sources as an authorized use of such funds. (Code of Laws of South Carolina §21-696 (1972)).

III. State Regulations related to contracting for vocational education services.

IV. Provisions of the State Plan for Vocational Education related to vocational education under contract.

The South Carolina State Plan for the Administration of Vocational Education provides, in part, in section 1.81, that a program of instruction may be offered by non-public agencies or institutions under written contracts with the State Board of Education, if and when there is a state law which gives the State Board legal authority to enter into a contract with a non-public agency, and when such a program of instruction cannot be provided in a satisfactory manner through a public agency.

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

South Carolina (cont'd)

It shall be illegal for any person engaged in the business of operating a business college, university or similar school to issue degrees of any kind, except upon the approval of the State Board of Education. (Code of Laws of South Carolina, art. 5, §21-671 to -677, (Supp. 1976)).

No person shall: make false, deceptive, inaccurate or misleading statements or representation in connection with the offering or publicizing of a course, (defined as any course, plan, program of instruction whether conducted in person, by mail, or any other method); promise or guarantee employment utilizing information, training or skill purported to be provided unless the promisor offers a bona fide contract of employment; use fraud, deception or misrepresentation in the conduct, administration or solicitation of students for courses. No person shall solicit students or sell courses without a permit from the Department of Education. (Code of Laws of South Carolina, ch. 15.1, §§21-741 to -749, (1972)).

The State Board of Education may license proprietary schools meeting necessary standards, which shall include but not be limited to: course offerings, adequate facilities, financial stability, competent personnel; provide for the adequate investigation of all schools applying for licenses, and maintain a list of schools licensed. No person shall operate a proprietary school without a license. (Code of Laws of South Carolina, ch. 15.2, §§21-750 to -750.17, (1972 as amended (Supp. 1976)).

VI. Policy Analysis

State Statutes do not appear to authorize the State Board or LEAs to contract with private vocational training institutions. In addition, the State Plan indicates that the lack of statutory authority prohibits the State Board from such contracting. However, even if the state legislature did enact authorizing legislation, it appears that such legislation would be in conflict with Art. XI §4 of the South Carolina Constitution which prohibits public funds from being paid to private educational institutions. Consequently, we have placed South Carolina in a category which indicates that neither the State Board nor LEAs have authority to contract with private vocational training sources.

C. The State Board Appears to Have Authority to Contract With Private Vocational Training Sources, But It Does Not Appear That the LEAs Do

States or Territories

In This Category

1. Alaska
2. Delaware
3. Hawaii
4. Idaho
5. Louisiana
6. Montana
7. New Mexico
8. Tennessee

Alaska

I. State Statutes related to the control of vocational education.

"The State of Alaska accepts . . . all of the provisions of [the Vocational Education Act] . . ." (Alaska Stats. Ann., ch. 35, §14.35.010 (1976)) "The State Board of Education serves as the State Board for the purposes of [The Vocational Education Act] . . ." (Alaska Stats. Ann., ch. 35, §14.35.020 (1976)).

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services.

State Statutes do not expressly authorize contracts with private vocational training sources.

III. State Regulations related to contracting for vocational education services.

The Alaska Administrative Code, states in part, that the Alaska Plan for Vocational Education is officially adopted as the standard for the administration of vocational education in the State. (4AAC 51.010(a)(1975))

IV. Provisions of the FY 77 State Plan for Vocational Education related to vocational education under contract.

The Alaska Plan for Vocational Education states, in section 1.8, (Vocational education under contract), in part, that vocational education services provided with Federal funds will not include payment of salaries of teachers or other employees of private schools, except for services performed outside the regular hours of duty and under public supervision and control, nor shall public funds be used for payment for use of equipment other than mobile or portable equipment. Federal funds will not be appropriated for organizations with closed memberships.

Section 1.81, (private post-secondary vocational training institutions), states, in part, that arrangements may be made with private vocational training institutions where such institution can make a significant contribution to attaining the objectives of the State Plan. Power to enter into memorandums of agreement concerning vocational education with public and/or private agencies will be vested in the State Director for Vocational Education. Contracts will be reviewed annually.

Alaska (cont'd)

Section 1.82 (Other Agencies and Institutions), states in part, that arrangements may be made for a portion of the program of instruction through written contracts with the State Board. Contracts will describe the portion to be provided and will incorporate standards and requirements of vocational education as set forth in the State Plan. Before entering into a contract, the State Board must have assurance that:
- the contract is in accordance with State and local law;
- the instruction provided will be conducted as part of the State Program and will constitute a reasonable and prudent use of the funds available;
- the contract will be reviewed at least annually by the parties concerned.

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

No post-secondary institution may operate in the State unless issued a valid authorization from the Commission on Postsecondary Education. The institution shall be in compliance with minimum standards, including:
1). the quality and content of each course or program of instruction, training, or study are such as may adequately achieve stated objectives for which the course is offered;
2). the institution has, or has access to, adequate space, equipment, instructional materials and personnel to achieve stated objectives and provide education of good quality;
3). the education and experience qualifications of directors, administrators, supervisors, and instructors are such as may reasonably insure education consistent with the objectives of the course;
4). the institution maintains adequate records;
5). the institution is in compliance with all pertinent ordinances and laws relating to safety and health;
6). the institution has a fair and equitable refund policy.
Accreditation by national or regional accrediting agencies recognized by the Commission may be accepted as evidence of compliance with minimum standards.
(A.S.A. Ann., ch. 48, §§14.48.010-.210 (1976))

Alaska (cont'd)

VI. Policy Analysis

Although state statutes do not refer expressly to contracting with private vocational training sources, they do indicate that Alaska "accepts . . . all of the provisions of [the Vocational Education Act]" and that the State Board of Education serves as the State Board for purposes of vocational education. State regulations adopt the State Plan as the standard for administration of vocational education in the State. The State Plan provides that the State Director for vocational education may enter into memoranda of agreement concerning vocational education with public and/or private agencies. In addition, the State Board may enter into written contracts to provide for a portion of the program of instruction with other agencies and institutions. Thus, it appears that state statutes and regulations provide implied authority for the State Board to contract with private vocational training sources.

State statutes do not appear to provide either express or implied authority for LEAs to contract with private vocational training sources. Furthermore, the State Plan does not indicate that LEAs are authorized to do so. Consequently, we have placed Alaska in a category which indicates that the State Board has authority, but LEAs do not.

Delaware

I. State Statutes related to control of vocational education.

"The State Board for Vocational Education shall: (1) be responsible for the preparation of the State Plan for Vocational Education and the execution of its provisions; and (2) be responsible for the disbursement of vocational funds received from the U.S. Government and the State . . ." (Del. Code Ann., 14 §3310, (Rev. 1974)).

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services.

III. State Regulations related to contracting for vocational education services.

IV. Provisions of the FY 77 State Plan for Vocational Education related to vocational education under contract.

The Delaware State Plan for Career Education, provides in section 1.81; that the State Board may arrange for educational programs through contractual arrangements with private educational agencies and institutions. Provided, however, that such an institution can make a significant contribution to attaining the objectives of the State Plan, and can provide substantially equivalent training at a lesser cost, or can provide equipment or services not available in public institutions.

Section 1.82 provides that the State Board may also contract for vocational education programs and/or services for qualified residents of the State where such education is of a nature, duration, or which for other reasons may be provided more economically or in a more appropriate manner by contracting with a public or private institution or agency within or without the State. The contract will be in accordance with state and local law, will assure that instruction provided will be considered as part of the career education program of the state, and will constitute a reasonable and prudent use of funds available under the State Plan. Contract will be reviewed annually by parties concerned.

Delaware (cont'd)

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

No person or corporation shall conduct a private school or classes in business or trade subjects without a certificate of approval from the state board of education. Schools and classes must be conducted in accordance to standards, rules, and regulations adopted by the board. The board may inspect schools or classes from time to time. Every person representing such a school, whether located within or without the state, shall make application for an agent's permit to the board. (Del. Code Ann., ch. 85, §§8501 to 8529, (Rev. 1974)).

VI. Policy Analysis

State statutes do not expressly authorize the State Board to enter into such contracts. However, state statutes appear to provide implied authority for the State Board to contract with private vocational training sources, i.e., the State Board is responsible for the execution of the provisions of the State Plan. The State Plan provides that the State Board may contract with public and private agencies and institutions. Thus, it appears that the general authority of the State Board may provide implied authority for such contracts.

State Statutes do not appear to provide either express or implied authority for LEAs to contract with private vocational training sources. Furthermore, the State Plan does not authorize such contracting. Consequently, we have placed Delaware in a category which indicates that the State Board has such authority, but LEAs do not.

Hawaii

I. State statutes related to control of vocational education.

Hawaii Rev. Stats. (Supp. 1975), §305A-2, designates the Board of Regents of the University of Hawaii as the State Board for Vocational Education.

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services.

The State Board for Vocational Education may do all things necessary to entitle the State to receive benefits of federal aid to vocational education; represent the State in all matters in reference to the expenditure, distribution, and disbursement of moneys received from such acts; designate such colleges, schools, departments, or classes as may be entitled to participate in the benefits of moneys received from apportionments made in such Acts as in its judgment and discretion will best serve the interests of vocational education in the state and carry out the spirit, purposes, and provisions of such Acts of Congress. (Hawaii Rev. Stats., §§305A-3 (Supp. 1975)).

In Hawaii the State Board of Education serves as the governing board for school districts. The State Board of Education does not appear to have express or implied authority to contract with private vocational training sources. (See Hawaii Rev. Stats. §§296-2(1969)).

III. State Regulations related to contracting for vocational education services.

IV. Provisions of the FY 77 State Plan for Vocational Education related to vocational education under contract.

The Hawaii State Plan for Vocational Education provides, in section 1.81, in part, that the Board may make arrangements to provide vocational instruction with private post-secondary vocational training institutions when the following conditions have been met:
1) that the institution can make a significant contribution to attaining the objectives of the State Plan, and
2) that instruction to be provided is substantially equivalent, and can be provided at a lesser cost than at public institutions,
3) the institution can provide equipment of services not available in public agencies or institutions, and
4) that contracts will be reviewed at least annually by the parties concerned.

Hawaii (cont'd)

Section 1.82 provides, in part, that the State Board may enter into written contracts to provide any portion of the vocational education program with public and non-public agencies of institutions. Such contracts must; describe the portion of instruction to be provided and incorporate standards and requirements of the State Plan; be in accordance with State and local laws; provide that instruction will be conducted as part of the vocational education program of the State; and be reviewed annually by the parties concerned.

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

No private trade, vocational or technical school shall operate in the state without a license from the Department of Education. No license shall be issued until the department has approved the method and content of advertising, the standards and methods of instruction and the equipment provided. (Hawaii Rev. Stats., T. 18, part III, §§300-41 to -45, (1969), as amended (Supp. 1975)).

Rules of the Board of Education, State of Hawaii, Rule 46 "Relating to the Licensing of Private Trade, Vocational and Technical Schools," provides, in part, that all private trade, vocational or technical schools shall be licensed as provided by law and shall adhere to the following rules and regulations, which have to force and effect of law, including:

1). Application for the initial license shall be accompanied by the following:

a) a complete statement of the training and experience of the chief administrator of the school,

b) letters from at least 3 persons testifying to the character, ability, and competency of the chief to conduct the school as proposed,

c) a bank reference of the applicant, the initial working capital of the school, and a projected financial statement for its first six months of operation,

d) certificates of clearance from the County Building Department and the State Health Department,

Hawaii (cont'd)

e) a floor plan showing the location of offices, library, classrooms, labs, restrooms and other facilities,
f) a list of equipment to be provided for each course,
g) an outline of the course to be offered,
h) a statement describing the standards and methods of instruction to be used,
i) a copy of student contracts and enrollment forms,
j) a statement of the method and content of advertising to be used,
k) a qualifications record for each member of the professional staff,
l) a surety bond of $50,000,
m) a copy of the articles of incorporation or partnership and by-laws filed with the State Department of Regulatory Services, if applicable.

2). All instructors must possess valid instructors licenses issued by the Department of Education.

VI. Policy Analysis

State Statutes do not expressly authorize the State Board to contract with private vocational training sources. However, it appears that the general authority of the State Board may provide implied authority to enter into such contracts. The State Plan indicates that the Board may enter the contracts with private post-secondary vocational institutions, and/or with public and non-public agencies or institutions for vocational education.

State Statutes do not appear to provide either express or implied authority for the State Board of Education [the LEA] to contract with private vocational training sources. Furthermore, the State Plan does not indicate that the LEA may contract with private vocational training sources. Consequently, we have placed Hawaii in a category which indicates the State Board has such authority, but the "LEA" does not.

Idaho

I. State Statutes related to control of vocational education.

The State Board of Education is designated as the State Board for vocational education "for the purpose of carrying into effect the provisions of [the Vocational Education Act[. . ." (Idaho Code Ann., §33-22-2, (Supp. 1976)).

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services.

The State Board shall have "full power to formulate plans for the promotion of vocational education in such subjects as are an essential and integral part of the public school system of the state . . ."(Idaho Code Ann., §33-2203 (1963)).

The powers of the State Board for vocational education include, "to cooperate with any governmental agency, any person, firm or association, in the conduct of any educational program . . ." (Idaho Code Ann., ch. 22, §33-2211(9), (Supp. 1976))

III. State Regulations related to contracting for vocational education services.

IV. Provisions of the FY 77 State Plan for Vocational Education related to vocational education under contract.

The Idaho State Plan for Vocational Education, section 1.8, states in part, that the state board may provide for vocational instruction on an individual basis under contract with public and non-public agencies or institutions other than LEAs. Each contract shall be in writing, and include all of the following conditions:
1). that the contract be in accordance with state and local laws,
2). that instruction provided will be conducted as part of the vocational education program under the supervision of the state board, and in accordance with standards and requirements of the state plan,
3) each contract shall constitute a reasonable and prudent use of funds,
4). contain an assurance that federal, state and local funds paid to the institution or agency shall be used only to lower, or eliminate the rate or tuition, fees and/or other charges which would otherwise be collected from persons receiving instruction,
5). that the contract will be reviewed at least annually by the parties concerned.

Idaho (cont'd)

Section 1.81 provides, in part, that the state board may contract with private post-secondary vocational institutions pursuant to section 1.8, where the state board of the LEA determines that such an institution can make significant contribution to attaining the objectives of the state plan, and provide substantially equivalent training at a lesser cost, or provide equipment and services not available in public agencies or institutions.

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

With the exception of educational institutions accredited by a national or regional accrediting agency recognized by the state board, or an institution accredited by the state board - all courses offered must hold a certificate of compliance issued by the state board of education. Persons or agents soliciting students for institutions must first obtain a permit and supply the required bond fee. No person or agent shall; make misleading or false statements concerning the offering or publicizing of courses, or promise or guarantee employment upon completion of the program unless offering the student a bona fide contract agreeing to employment. (Idaho Code Ann., ch. 24, §§33-2401 to -2412 (1973) as amended (Supp. 1976)).

VI. Policy Analysis

State Statutes do not expressly authorize the State Board to contract with private vocational training sources. However, it appears that the general authority of the State Board may provide implied authority to enter into such contracts. The State Plan provides that the State Board may contract with public and non-public agencies and institutions (other than LEAs), and with private post-secondary vocational training institutions.

State Statutes do not appear to provide express or implied authority for LEAs to contract with private vocational training sources. Furthermore, the State Plan does not authorize LEAs to enter into such contracts. Consequently, we have placed Idaho in a category which indicates that the State Board has such authority, but LEAs do not.

Louisiana

I. State Statutes related to control of vocational education.

The State Board of Education is designated as the state agency "for the purposes of carrying into effect the provisions of [the Vocational Education Act]. . . and is authorized and directed to cooperate with the [Office of Education]. . ."(L.S.A.-R.S. §17:2033 (Supp. 1976)).

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services.

The powers of the State Board of Education include the power to enter into contracts and agreements, in accordance with applicable law, and to the extent that funds are specifically appropriated therefor, with private agencies with respect to cooperative enterprises and undertakings related to or associated with an educational purpose or program affecting education in the public schools. (L.S.A.-R.S. §17:6(12) (1974)).

III. State Regulations related to contracting for vocational education services.

IV. Provisions of the FY 77 State Plan for Vocational Education related to vocational education under contract.

The Louisiana State Plan for Vocational Education, section 1.8 (vocational education under contract), provides, in part, that the State Board may make arrangements for provision of any portion of a program of instruction by a public or non-public agency or institution as provided in sections 1.81 and 1.82 through written contracts. Contracts shall describe the portion of instruction to be provided, incorporate standards and requirements of the State Plan, and be entered into only if:

a) the institution can provide training that is substantially equivalent at a lesser cost, or training that is unavailable in public institutions, and

Louisiana (cont'd)

b) is in accordance with state and local laws, and
c) instruction provided is conducted as part of the state program and constitutes a reasonable and prudent use of funds, and
d) there is an assurance that the contracted agency or institution will use funds only to lower the rate of, or eliminate tuition, fees or other charges which would normally be charged persons receiving instruction, and
e) that the contract will be reviewed annually by the parties concerned.

Section 1.81 provides, in part, that post-secondary education may be provided with arrangements with non-public post-secondary institutions pursuant to 1.8 where the institution can make a significant contribution to attaining the objectives of the state plan, and can provide substantially equivalent training at a lesser cost, or equipment and services not available in public agencies or institutions. Private post-secondary vocational training institution means a private business or trade school, a technical institution or other vocational technical school providing post-secondary education in any state which meets the following requirements:

a) admits as regular students persons who have completed or left elementary or secondary school and who have the ability to benefit from the training offered,
b) is legally authorized and provides within the state a program of post-secondary vocational or technical education designed to fit individuals for useful employment in recognized occupations,
c) has been in existence for two years and has been especially accredited by the USOE as an institution meeting the requirements of this section, and
d) is accredited by:
    1) a nationally recognized accrediting agency or association listed by the USOE, or
    2) if no nationally recognized accrediting agency exists, accreditation is granted by the state agency listed by the U. S. Commissioner of Education, or

Louisiana (cont'd)

3) if no accrediting agency exists, accreditation is granted by an advisory committee appointed by the U.S. Commissioner.

Section 1.82 provides, in part, that the State Board may enter into agreements with other agencies or institutions if it is determined that it can make a significant contribution to attaining the objectives of the State Plan, and can provide training not available in public agencies or institutions, or substantially equivalent training at a lesser cost, or equipment or services not available in public institutions. Contracts must provide assurance that:

a) in accordance with state and local law,
b) instruction is conducted as part of the vocational education program of the state and constitute a reasonable and prudent use of funds,
c) that funds will be used only to lower the rate or eliminate tuition, or other charges usually paid by students,
d) will be reviewed at least annually by the parties concerned.

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

There is hereby established in the State Department of Education an Advisory Commission on Proprietary Schools. The Commission shall review all license applications and recommend to the State Department of Education their acceptance or denial and provide a written statement as to the reasons for their decisions in all cases.

No proprietary school shall do business in the state unless the owner holds a valid license issued by the Commission. No school shall be issued a license unless it meets minimum standards, including:

- that the school has a balanced audit sheet showing solvency,
- that the school has qualified instructors,
- that all advertising and representation is free from fraud,
- that work or study facilities must meet safety and sanitary standards of the state department of health,

Louisiana (cont'd)

- that the school adheres to the tuition refund schedule as represented to the student,
- that prior to enrollment the student is furnished with a published statement of all charges and fees,
- that the school is equipped and able at all times to comply with its contracted relationships with its enrolled students,
- that facilities, instruction rooms, housing quarters and eating facilities are at all reasonable times open to inspection by the state superintendent of public instruction, the Commission and representatives of the state department of health,
- that all equipment furnished is suitable and similar to that which is customarily used in the work that would be performed by a student taking that course of instruction upon completion of the course.

The State Board of Elementary and Secondary Education shall approve or disapprove occupational degree requests submitted by eligible licensed post-secondary proprietary schools. Post-secondary proprietary schools shall be eligible for degree granting status if:

(1) Licensed by the State Board of Elementary and Secondary Education;

(2) Domiciled in the state of Louisiana; and

(3) Accredited by the Association of Colleges and Schools, the National Association of Trade and Technical Schools or the Southern Association for Colleges and Schools.

Eligible post-secondary proprietary schools shall award the non-academic degree entitled "The Associate in Occupational Studies." No proprietary school shall award the Associate of Arts or Associate of Science.

(L.S.A.-R.S. 17:3141.1-17:3141.15, (Supp. 1976)).

VI. Policy Analysis

State Statutes do not provide express authority for the State Board to contract with private vocational training sources. However, it appears that the general authority of the State Board may provide implied authority for such contracting. The State Plan provides that the State Board may enter into written contracts with private post-secondary vocational training institutions, and with other agencies or institutions.

State Statutes do not appear to provide express or implied authority for LEAs to contract with private vocational training sources. Furthermore, the State Plan does not authorize LEAs to enter into such contracts. Consequently, we have placed Louisiana in a category which indicates that the State Board appears to have such authority, but LEAs do not.

Montana

I. State Statutes related to control of vocational education.

The Board of Education "shall be the governing board of the state of Montana for vocational education." The Board "shall adopt policies to effect the orderly development of a system of vocational education that is adaptable to changing needs . . .[and]. . . coordinated with federal guidelines and requirements for vocational education . . ." (Montana Rev. Code Ann., ch. 77, §75-7702, (Supp. 1975))

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services.

"The State of Montana hereby reaffirms the acceptance of and assents to the terms and provisions of [the Vocational Education Act]". (Montana Rev. Code Ann., ch. 77, §75-7705 (Supp. 1975))

III. State Regulations related to contracting for vocational education services.

IV. Provisions of the FY 77 State Plan for Vocational Education related to vocational education under contract.

The Montana State Plan for the Administration of Vocational Education, section 1.8 (vocational education under contract), states, in part, that the State Board may contract with private institutions or agencies when the State Board has determined that such organization can provide education or training at a lesser cost, or can provide equipment or services not available in public agencies. The following requirements must be met:

a) each contract is in writing,
b) contract incorporates applicable standards and requirements in the state plan,
c) each contract is in accordance with state and local laws,
d) instruction be conducted as part of the state and local program under the supervision of the Superintendent of Public Instruction,
e) the contract constitutes a reasonable and prudent use of funds available under the State Plan,
f) the contract includes an assurance that all funds paid to the contracting agency will be used only to lower the rate of or eliminate tuition, fees and other charges that would otherwise be collected.

Montana (cont'd)

Section 1.81 provides that the State Board may contract with private post-secondary vocational training institutions to provide vocational education training not otherwise available at a lesser cost in public agencies provided that policies and procedures in 1.8 are met.

Section 1.82 provides that the State Board may contract with other agencies and institutions such as, but not limited to, institutions of higher learning to provide vocational training.

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

No post-secondary proprietary school shall operate without a license from the Department of Business Regulation. No license shall be granted unless the institution is in compliance with the following minimum standards: that the quality and content of the course or program of instruction achieves the stated objectives; that the institution provides adequate space, equipment, instructional materials and personnel to provide education of good quality; that adequate records are kept; that the institution is in compliance with laws of safety and health, that the institution has financial stability; and that advertising, sales or credit is not false, deceptive, misleading, or unfair; and that the institution maintains a fair and equitable refund and cancellation policy. Accrediting by a national or regional accrediting agency recognized by the USOE may be accepted as evidence of compliance with minimum standards. (Montana Rev. Code Ann., ch. 92, §§75-9201 to -9223, (Supp. 1975)).

VI. Policy Analysis

State Statutes do not expressly authorize the State Board to contract with private vocational training sources. However, it appears that the general authority of the State Board may provide implied authority for such contracting. The State Plan provides that the State Board may contract with private agencies or institutions, including, but not limited to, institutions of higher learning.

State Statutes do not appear to provide express or implied authority for LEAs to contract with private vocational training sources. Nor does the State Plan indicate that LEAs may enter into such contracts. Consequently, we have placed Montana in a category which indicates that the State Board appears to have such authority, but LEAs do not.

New Mexico

I. State Statutes related to control of vocational education.

The State Board is the governing authority and "shall establish policies for the conduct of all programs of the state plans established relating to vocational education . . . unless otherwise provided by law. The State Board, "shall be the sole agency of the state for the administration of or for the supervision of the administration of any state plan relating to vocational education . . ., or for any federal aid funds, except as may otherwise be provided for by law." (New Mexico Stats. Ann., §77-12-2A. and B. (C. 1953, as supplemented)).

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services.

"The State Board may delegate to the vocational division its administrative functions relating to vocational education." (§77-2104(c)(New Mexico Stats. Ann.) (C. 1953, as supplemented)) "Subject to the policies of the state board, the vocational education division shall . . . (c) cooperate and make agreements with public or private agencies to establish or to maintain a vocational education program . . ." (New Mexico Stats. Ann., §77-12-5(c)(C. 1953, as supplemented)).

A local school board may "contract . . . for the school district." (New Mexico Stats. Ann., §77-4-2F. (C. 1953 as supplemented)).

III. State Regulations related to contracting for vocational education services.

IV. Provisions of the FY 77 State Plan for Vocational Education related to vocational education under contract.

The New Mexico State Plan provides in section 1.8 that the State Board may contract with public or private agencies or institutions (other than the state or local board), to provide any portion of the program of instruction. Written contracts must:

a) clearly describe the portion of instruction to be provided,
b) incorporate standards of the state plan,
c) be in accordance with state and local laws,
d) provide that instruction be considered part of the state vocational education program,
e) constitute a reasonable and prudent use of funds,

New Mexico (cont'd)

f) assure that public funds will only be used to lower the rate of or eliminate tuition,
g) be reviewed annually.

Section 1.81 defines a private post-secondary vocational training institution as a privately-owned business or trade school technical institution or other vocational-technical school providing post-secondary education meeting federal requirements, in New Mexico.

Arrangements may be made with such institution when it is determined that; the institution can make a significant contribution to the objectives of the state plan, can provide equivalent training at a lower cost or equipment and services not available in public agencies.

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

No post-secondary educational institution (except those accredited by a national or regional accrediting agency recognized by the USOE), shall operate without obtaining a permit or certificate of approval from the board of educational finance. The board shall promulgate rules and regulations that set minimum standards for: adequate space, equipment, instructional material, curriculum and personnel; providing a tuition refund policy; require maintenance of adequate records; regulate the use of deceptive or misleading advertising; and provide standards for the evaluation of financial stability. ("Post-secondary Educational Institution Act") New Mexico Stats. Ann., art. 40, §§73-40-1 to -13 (C. 1953 as Supplemented).

No out-of-state proprietary school or its agent (except those accredited by a national or regional accrediting agency recognized by the USOE), shall: make or cause to be made, any statement or representation in connection with the offering or publicizing of a course, if the agent knows or reasonably should know the statement to be false, deceptive, substantially inaccurate or misleading; promise or guarantee employment unless a promisor or guarantor offers the student a bona fide contract of employment; do any act constituting part of the

New Mexico (cont'd)

conduct or administration of the course, or the obtaining of students that is carried on by the use of fraud, deception, misrepresentation, or by any agent soliciting students without a permit. All agents for out-of-state proprietary schools shall obtain a permit and supply a surety bond to the board of education finance. ("Out-Of-State Proprietary School Act" (New Mexico Stats. Ann., §§73-4101 to -9, (C. 1953 as supplemented)).

VI. Policy Analysis

State Statutes do not provide express authority for the State Board to contract with vocational training sources. However, it may develop policies under which the vocational education division can contract with private vocational training sources. Thus, it appears that the State Board has authority to provide for such contracts. The State Plan provides that the State Board may contract with public or private agencies or institutions (other than the state or local board) including post-secondary institutions.

State Statutes do not appear to provide express authority for LEAs to contract with private vocational training sources. Although LEAs have general contract authority, the State Plan does not authorize LEAs to enter into such contracts. Consequently, we have placed New Mexico in a category which indicates that the State Board appears to have such authority, but LEAs do not.

Tennessee

I. State Statutes related to control of vocational education.

The State Board of education is designated the State Board for vocational education and "is authorized and empowered to accept . . . any and all acts of Congress pertaining to vocational education . . ." The State Board is designated the sole state agency for administering vocational education programs in cooperation with the federal government . . ." (Tenn. Code. Ann., ch. 27, §49-2701, (1966 Replace.)).

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services.

"The State Board for Vocational Education is hereby authorized to enter into contracts with . . . (3) any other public or private board, foundation or agency, or (4) any individual or group of individuals, as it may deem necessary for the operation of area vocational technical schools . . . in order to carry out the provisions of §§49-2609-46-49-4618 [Requirements related to the provision of comprehensive vocational and technical education.] (Tenn. Code. Ann., ch. 27, §49-612(3) and (4) (1966 Replacement)).

III. State Regulations related to contracting for vocational education services.

IV. Provisions of the FY 77 State Plan for Vocational Education related to vocational education under contract.

The Tennessee State Plan for Vocational Education provides in Section 1.8 (Vocational Education Under Contract) that,

While it is the intent and purpose of the State Board to provide vocational education through State and local public educational agencies and institutions, contractual arrangements may be entered into with other agencies or institutions, either public or non-public to provide any portion of the program of instruction on an individual or group basis.

Contracts for training to be provided by other than the State Board or local educational agency shall describe the portion of instruction to be provided by such agency or institution and shall:

1) be in accordance with State and/or local laws,
2) be conducted as a part of the vocational education program of the State,
3) constitute a reasonable and prudent use of funds available under the State Plan, and

Tennessee (cont'd)

(4) contain an assurance that Federal, State and local funds paid over to the contracting agency or institution will be used only to lower the rate of or eliminate tuition, fees, and other charges which otherwise would be collected from persons benefiting from such portion of the program. Such contracts shall be entered into for a period not to extend beyond June 30. They shall be reviewed and may be renewed at the discretion of the State Board.

1.81 Private Postsecondary Vocational Training Institutions. In the event the State Board determines that private postsecondary vocational training institutions meeting the requirements of the Act and the Regulations and the State Plan can make a significant contribution to attaining the objectives of vocational education as set forth in the State Plan and can provide substantially equivalent training at a lesser cost or can provide equipment or services not available in public institutions, the State Board may enter into a written contractual agreement with such institutions.

1.82 Other Agencies and Institutions. The State Board may also enter into written contractual agreements with other agencies and institutions (other than private postsecondary vocational training institutions under 1.81 above) as it deems appropriate to the fulfillment of its responsibilities under the Act, the Regulations, and the State Plan.

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

No person, agent or group shall operate a post-secondary institution unless holding a currently valid authorization from the commission on post-secondary vocational education institution authorization. No person(s) shall solicit students without an agent's permit. Authorization shall not be granted an institution unless the school meets minimum standards, including:

Tennessee (cont'd)

That the quality and content of each course or program are such as may reasonably achieve the stated objective of the course or program;
That the institution has adequate space, equipment, instructional materials and personnel to provide education of good quality;
The education and experience of the director, administrators, supervisors, and instructors are such as may reasonably insure that students will receive education consistent with the objectives of the course;
That upon completion of training a student is given appropriate credentials;
That adequate records are maintained;
That no unfair, misleading or false advertising is used;
That the institution has a fair and equitable refund policy and cancellation policy.

Institutions accredited by a national or regional accrediting agency recognized by the USOE will be excepted as in compliance with minimum standards. (Tenn. Code Ann., ch. 39, §§ 49-3901 to -3924, (Supp. 1975).

VI. Policy Analysis

State Statutes expressly authorize the State Board to enter into contracts with private boards, foundations and agencies, and any individual or group of individuals. The State Plan provides that the State Board may contract with other public or non-public agencies and institutions and private post-secondary vocational training institutions. Thus, it appears that the State Board is authorized to contract with private vocational training sources.

State Statutes do not appear to provide either express or implied authority for LEAs to contract with private vocational training sources. Furthermore, the State Plan does not indicate that LEAs may enter into such contracts. Consequently, we have placed Tennessee in a category which indicates that the State Board appears to have such authority, but LEAs do not.

D. It Is Unclear Whether the State Board or LEAs Have Authority to Contract With Private Vocational Training Sources

States or Territories

In This Category

1. American Samoa
2. Guam
3. Indiana
4. Massachusetts
5. Missouri
6. New Hampshire
7. Oregon
8. South Dakota
9. Trust Territory of the Pacific

American Samoa

I. State Statutes related to control of vocational education.

"The board of regents shall act as the Board of Vocational Education" and "shall be responsible for the administration of a vocational education program for American Samoa". (Am. Samoa Code, T. 18 §4(a) and (c) (1973)).

II. Statutes related to authority to contract with non-public agencies or institutions for vocational education services.

III. Regulations related to contracting for vocational education services.

IV. Provisions of the FY 77 State Plan for Vocational Education related to vocational education under contract.

The State Plan for the Administration of Vocational Education section 1.8, subsection 1.81, states that there are no private post-secondary vocational training institutions in Samoa. If they develop, the Board may contract with them for services.

Section 1.82 provides, in part, that the State Board, through a written contract may make arrangements to provide any portion of instruction with a public or non-public agency or institution. Contracts shall describe the portion of the instruction to be provided and incorporate standards and requirements of the State Plan.

Contracts shall:

1) be in accordance with State or local law,
2) provide that instruction be conducted as part of the state program,
3) be reviewed at least annually.

V. Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

VI. Policy Analysis

The American Samoa Code does not appear to provide either express or implied authority for the State Board or LEAs to contract with private vocational training sources. However, the State Plan provides that the State Board may contract with public or non-public agencies or institutions. As a result of this apparent discrepancy between the Code and the State Plan, we have placed American Samoa in a category which indicates that it is unclear whether the State Board or LEAs have authority for such contracting.

Guam

I. State Statutes related to control of vocational education.

II. Statutes related to authority to contract with non-public agencies or institutions for vocational education services.

III. Regulations related to contracting for vocational education services.

IV. Provisions of the FY 77 State Plan for Vocational Education related to vocational education under contract.

The State Plan for Vocational Education, section 1.71, provides, in part, that where the Territorial Board determines that a private post-secondary vocational institution can make a significant contribution to attaining the State Plan objectives, and provide substantially equivalent training at a lesser cost, or provide essential equipment or services not available in public agencies, contractual agreements may be made.

Section 1.72 provides, that arrangements may be made for the provision of any portion of the vocational education program with public or non-public agencies or institutions through a written contract with the Territorial Board or LEA. Contracts shall describe the type of instruction to be provided, and incorporate standards and requirements of the State Plan. Contract may be entered into only upon determination that: (1) contract is in accordance with territorial or local law; (2) instruction is conducted as part of the Territorial program; (3) funds will be used only to lower or eliminate the rate of tuition. Contracts will be reviewed annually. Contracts entered into by LEAs shall be forwarded to the Territorial Board for filing with the local plan.

V. Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

VI. Policy Analysis

Although the State Plan indicates that the Territorial Board or LEAs may contract with private vocational training sources, we were not able to obtain a copy of the Territorial Code. Consequently, we have placed Guam in a category which indicates that it is unclear whether either Territorial Board or LEAs have authority to enter into such contracts.

Indiana

I. State Statutes related to control of vocational education.

The State Board of Education is designated the State Board of Vocational and Technical Education to carry out the provisions of federal acts relating to vocational education. (Burn's Ind. Stats. Ann., §20-1-8-3, (1975)).

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies and institutions for vocational education services.

The general powers of the Board of Vocational and Technical Education include: that the Board may contract for such services as it deems necessary to exercise the powers authorized in this Chapter. (Burn's Ind. Stats. Ann., §20-1-18.1-4, (1975))

In carrying out the school purpose of each school corporation, its governing body . . . shall have the following specific powers: 1) In the name of the school corporation to sue and be sued and to enter into contracts in matters permitted by applicable law. (Burn's Ind. Stats. Ann., §20-5-2-2(1)(1975))

III. State Regulations related to contracting for vocational education services.

IV. Provisions of the FY 77 State Plan for Vocational Education related to vocational education under contract.

The Indiana State Plan for Vocational Education section 1.8 states, in part, that LEAs may enter into a contract to provide from federal funds vocational education for persons, with other agencies, industry, business, private and non-profit schools, institutions, colleges and universities.

Section 1.81 provides, in part that an LEA may so contract with private vocational schools when the schools have submitted a plan which includes the items listed below, and when the State Board is assured that the contract is in accordance with state or local laws; and the instruction to be provided will meet the same standards as vocational education programs of the state and constitute a responsible and prudent use of funds. Contracts shall contain the following information:

Indiana (cont'd)

a) a rationale for conducting the programs,
b) basic goals and objectives of the program,
c) the qualifications and background of administrative and instructive personnel,
d) the location and facilities to be used,
e) the process for selecting and enrolling students,
f) the length of training programs, hours/day, weeks per year, and total teacher-pupil contact hours,
g) the maximum number of students to be enrolled in the class,
h) the cost per hour of student-teacher contact and student-administrator hour,
i) the procedure to be used for job placement,
j) any other pertinent data requested by the state board.

Section 1.82, provides, in part, that LEAs may contract with other agencies, or institutions. Contracts shall contain the same information as above.

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

The superintendent of public instruction is deemed the chairman of the private school accrediting commission. The commission is authorized to adopt rules and regulations to implement the accrediting act. No post-secondary school shall operate in the state without first obtaining accredition from the commission. No school shall be accredited unless it meets minimum standards including; that the institution has a sound financial structure; that the institution has satisfactory training or educational facilities with sufficient tools, supplies and equipment; and that the institution has an adequate number of qualified personnel, sufficiently trained by experience and/or education to give the instruction, education or training contemplated; and that advertising is free from misrepresentation. (Burn's Ind. Stats. Ann., §§20-1-19-1 to -24, (1975), as amended by Acts 1976, P.L. 95)

Indiana (cont'd)

VI. Policy Analysis

State statutes do not expressly authorize the State Board to contract with private vocational training sources. However, it appears that the general language of §§20-1-8-3 and 20-1-18.1-4 may provide implied authority for the State Board to enter into such contracts. Despite this apparent authority, the State Plan does not mention such contracting by the State Board.

State statutes do not expressly authorize LEAs to contract with private vocational training sources. Although the State Plan indicates that LEAs may enter into such contracts, it is unclear whether a state court would find that the general contract authority of §20-5-2-1(1) provides authority for LEAs to contract with private vocational training sources.

Massachusetts

I. State Statutes related to control of vocational education.

Federal funds for vocational education shall be expended under the order or approval of the State Board. (Mass. Gen. Ann. Laws, C.74 §20 (1975)).

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services.

M.G.L.A. c. 74 §21 provides that subject to §22, federal vocational education funds shall be paid out, on requisition of the State Board, as reimbursement for expenses already incurred, to approved schools and classes or courses for training entitled to receive them under the Act. However, M.G.L.A. C. 74 §22 (Use of federal funds) does not include contracting with private vocational training sources as an authorized use of funds.

III. State Regulations related to contracting for vocational education services.

IV. Provisions of the FY 77 State Plan for Vocational Education related to vocational education under contract.

The Massachusetts State Plan for Vocational Education provides in section 1.8 Vocational Education under Contract:

1.81 Private Post-Secondary Vocational Education Training Institutions

The State Board shall provide occupational education through contracts with private post-secondary vocational education institutions in the manner described in 1.82. No private training facility may be used to provide institutional training unless the organization is generally regarded as offering quality training as reflected by such factors as its placement record and accreditation status. In the case of an organization which has not previously engaged in training, evidence should clearly indicate that such facility can provide quality training. Such institution shall:

1) provide courses of instruction based on the recognized needs of the students, which will provide the skills and information requisite for employment,
2) provide instructional staff for such training that meets or exceeds the State's standards of training, education and experience for teaching,

Massachusetts (cont'd)

3) demonstrate suitable standards which set forth the level of competency that will be required for successful completion of training,
4) insure that all students will have the benefit of educational or vocational guidance services,
5) provide adequate facilities necessary for the training, including but not limited to, space, tools, machines, supplies, and teaching aids,
6) establish and maintain appropriate health and safety standards in the conduct of the training, and
7) demonstrate capability to meet its commitments for training as determined by submission of the latest financial statement. Students shall not be required to pay tuition. The tuition will be considered part of the proposal grant. The characteristics of students to be served will be described in detail. Student referrals shall be accepted from the Division of Employment Security, public school counselors, community agencies, youth organizations, law enforcement agencies, and other appropriate agencies.

1.82 Other Agencies and Institutions

Arrangements may be made for the provision of any portion of the program of instruction on an individual or group basis by public or non-public agencies or institutions (other than the State Board or LEA) through a written contract with the State Board of LEA. Such a contract shall be entered into only upon approval by the Associate Commissioner, Division of Occupational Education, acting for the State Board, and with satisfactory assurance that:

1) the contract is in accordance with State Law, and
2) the instruction to be provided under contract will be conducted as a part of the vocational education program of the State and will constitute a

Massachusetts (cont'd)

reasonable and prudent use of funds available under the State plan. Such contracts will be reviewed at least once annually by Programs Supervisors and Financial Auditors of the Division of Occupational Education. Other agencies will be contracted with for occupational programs when state or local agencies are unable to establish or maintain such programs or when, in the judgement of the Associate Commissioner, Division of Occupational Education such programs can be more efficiently and economically established or maintained by these other agencies. No local education agency who has received a grant award under P.L. 90-576 shall engage, incur any obligation for, or authorize payment for any contractual services except in accordance with Section 1.8. Reference:

1) Act, 108(II) A Thru D,
2) Federal Regional Volume 38, No. 213, November 6, 1973, Part 100C, Appendix B, "Cost Principles for State and Local Governments"., and
3) Federal Regulations Volume 40, No. 38, February 25, 1975 Part 102, State Vocational Education Programs, Section 102.5(a).

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

Licensing:

No private business school shall operate in the state without a license from the Commissioner of Education. The school must meet minimum standards, including but not limited to: adequate training and experience of instructors; financial certification from the state auditors office; adequate building and facilities for instruction; and equipment and premises maintained in safe and sanitary conditions. No school

Massachusetts (cont'd)

represented as accredited unless accredited by a national or regional accrediting agency recognized by the USOE. (Mass. Gen. Ann. Laws, ch. 75D, §§1-14, (1974)).

Rules and Regulations Governing Private Business Schools, to be met by persons, firms or corporations operating private business schools include:

1) standards for filing application for license,
2) standards for licensing by the Commissioner of Education,
3) standards for insuring a truthful description of courses and services rendered,
4) standards insuring the soundness of the courses offered,
5) standards to insure the charging of reasonable tuition fees,
6) standards regarding the housing of the school,
7) private schools to be organized and conducted only as a school.

No private trade school shall operate in the state unless licensed by the Commissioner of Education. No license shall be granted unless the Commissioner approves the proposed standards adopted and methods of instruction to be followed; the equipment and housing provided; the training and experience of teachers employed; and the form and method of student contracts and method of collecting tuition. (Mass. Gen. Laws., ch. 93, §§21-21D, (1963))

Rules and Regulations Governing Private Trade Schools, to be met by persons, firms, or corporations operating private trade schools, include:

1) standards for licensing by the Commissioner,
2) standards to insure a truthful description of course and services rendered,
3) standards to insure the soundness of courses offered,

Massachusetts (cont'd)

4) standards to insure that the school has a competent staff of instructors,
5) standards to insure the charging of reasonable tuition fees,
6) standards to insure the financial responsibility of the school management,
7) standards to insure adequate housing at the school,
8) standards to protect the interests and rights of pupils.

VI. Policy Analysis

State Statutes do not appear to provide either express or implied authority for the State Board or LEAs to contract with private vocational training sources. However, the State Plan provides that the State Board may contract with private post-secondary vocational training institutions, and that the State Board or LEA (with the approval of the State Board) may contract with other public or non-public agencies or institutions. As a result of this apparent discrepancy between State Statutes and the State Plan, we have placed Massachusetts in a category which indicates that it is unclear whether either the State Board or LEAs have such authority.

Missouri

I. State Statutes related to control of vocational education.

The State Board of Education is designated as the State Board for the purposes of cooperating with the U.S. Office of Education in administering acts of Congress related to vocational education. The State Board "is given all power necessary to such cooperation." (Rev. Stats. Mo., §178.490 (Supp. 1976)).

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies and institutions for vocational education services.

Sec. 432.070 (R.S.Mo. 1969) provides that no school district may contract "unless the same shall be within the scope of its powers or be expressly authorized by law." Although §178.490 (R.S.Mo. 1969) expressly authorizes contracting for vocational education services, it only authorizes local boards to contract with other school districts or state institutions.

III. State Regulations related to contracting for vocational education services.

IV. Provisions of the FY77 State Plan for Vocational Education related to vocational education under contract.

The Missouri State Plan for Vocational Education provides in section I.8 (vocational education under contract), that there is no state statutory provision for contracting, and cites the Attorney General Opinion which, in considering Sec. 432.070 (R.S.Mo. 1969) (see above), concludes that:

"Therefore, it is our opinion that school districts may not contract with private institutions for the technical training of high school and post-secondary or adult students because they are not expressly authorized by law, nor are they provided for in the . . . State Plan" (Opinion letter no. 354, Aug. 21, 1970.)

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

VI. Policy Analysis

State Statutes do not expressly authorize the State Board to contract with private vocational training sources. Although it appears that the general authority of the State Board could be construed to provide implied authority, the State Plan is silent with respect to such contracting by the State Board.

Missouri (cont'd)

State statutes do not appear to provide either express or implied authority for LEA contracts with private vocational training sources. Furthermore, the State Plan refers to an Attorney General's opinion which indicates that school districts are not authorized to enter into such contracts.

However, the Missouri Department of Education has recently indicated that Attorney General Opinion #354 (see above) has been withdrawn. The implications of the withdrawal of this Attorney General's opinion are unclear. Consequently, we have placed Missouri in a category which indicates that it is unclear whether either the State Board or LEAs have authority for such contracting.

New Hampshire

I. State Statutes related to control of vocational education.

The State Board of Education is hereby designated as the sole state agency to receive federal funds and administer state participation in the program authorized by the Vocational Education Act. (N.H. Rev. Stats. Ann., §188A:9 (1974)). The State Board "shall have the same powers of management, supervision and direction over all the public schools as the directors of a business corporation have over its business, except as otherwise limited by laws." (N.H. Rev. Stats. Ann., §186:5 (1974))

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services.

III. State Regulations related to contracting for vocational education services.

IV. Provisions of the FY 77 State Plan for Vocational Education related to vocational education under contract.

The New Hampshire State Plan for Vocational Education, section 1.81 provides, that post-secondary vocational instruction may be provided in other than public institution only through arrangements with private post-secondary vocational training institutions where the State Department or LEA determines that such a private school can make a significant contribution to attaining the objectives of the State Plan, and can provide substantially equivalent training at a lesser cost, or can provide equipment or services not available in public institutions. Contracts will be in accordance with state or local law and will be reviewed at least annually. Instruction provided under contract will be conducted as part of the vocational education program of the state and will constitute a reasonable and prudent use of funds.

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

Every private commercial, correspondence, trade or other school is required to register with, and obtain a license from the state board of education. Licenses shall be issued under minimum standards established by the board, such as financial stability, educational program, administration and staff qualifications, business procedures, facilities, equipment,

New Hampshire (cont'd)

and ethical procedures. (N.H. Rev. Stats. Ann., ch. 188-C, §§1-9, (Supp. 1975)).

VI. Policy Analysis

State Statutes do not appear to provide either express or implied authority for the State Board or LEAs to contract with private vocational training sources. Although the State Plan provides that the State Department or LEA may enter into contracts with private post-secondary vocational training institutions, it is unclear whether a state court would find that the State Board and LEAs have authority to contract with private vocational training sources.

Oregon

I. State Statutes related to control of vocational education.

The State Board of Education may, "Apply for federal funds and accept and enter into any contracts or agreements in behalf of the State for the receipt of such funds . . . including but not limited to, any funds available . . . for vocational education purposes . . . ."(Ore. Rev. Stats., §326.051(2)(b) (1976)).

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services.

"The State of Oregon hereby accepts all provisions and benefits of [the Vocational Education Act] . . ."(Ore. Rev. Stats., §344.100(1976))

"Any district school board may cooperate with the State Board of Education in establishment of vocational schools or classes giving instruction in agricultural subjects, the trade or industrial subjects, or in home economics subjects . . ."(Ore. Rev. Stats., §344.130(1976)).

A district operating a community college may contract with a private vocational school, (as defined in ORS 345.010) to provide educational services to students enrolled in the community college when, in the judgment of the administration of the college, the services which are the subject of the contract meet the standards of educational services provided by the college and the contract price for such services does not exceed the costs which otherwise would be incurred by the college to provide similar services. Contract services shall not include services offered by correspondence. (Ore. Rev. Stats. §341.445(1)(1976)).

III. State Regulations related to contracting for vocational education services.

Oregon (cont'd)

IV. Provisions of the FY 77 State Plan for Vocational Education related to vocational education under contract.

The Oregon State Plan for Vocational Education, section 1.8, provides, that the State Board and LEAs may make provisions with other public or non-public agencies or institutions through written contracts to provide any portion of the vocational education program to the extent that needs are identified and funds are available.

Contracts must meet the following conditions:

1) be in accordance with State and local laws,
2) that instruction provided will be conducted as part of the State vocational education programs priorities,
3) provide for effective use of funds under the State Plan,
4) that money paid to the contracting agency or institution is used only to lower the rate of or eliminate tuition, fees or other charges which would otherwise be collected from students,
5) that contracts are reviewed annually by the parties concerned.

Section 1.81 provides that the State Board or LEA may through written contracts pursuant to sec. 1.8, provide post-secondary instruction through private post-secondary vocational training institution to the extent that needs are identified and funds are available.

Oregon (cont'd)

Conditions to be met:

1) that the private school can make a significant contribution to meeting the state vocational education program priorities;
2) that the private school can provide equivalent training at a lesser cost, or
3) equipment or services not available at public institutions or agencies.

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

No private vocational school shall operate without obtaining a license from the Superintendent of Public Instruction. The State Board shall adopt minimum standards, reasonably calculated to assure.

1) that the quality and content of each course or program of instruction are such as may adequately achieve the stated objectives of the course;
2) that the school has adequate space, equipment, instructional materials and personnel to provide instruction of good quality;
3) that educational and experience of directors, administrators, supervisors, and instructors are such as may reasonably insure that students will receive instruction consistent with the objectives of the course;
4) that the vocational schools provide students with a catalog or brochure containing information describing courses and programs offered, length of courses, schedule of tuition, fees and all other charges, and the cancellation and refund policy;
5) that upon satisfactory completion of instruction, the student is given the appropriate credentials;
6) that adequate records are maintained;
7) that the school is maintained in compliance with all pertinent ordinances and laws relating to safety and health.

Any school licensed in another state or accredited by a recognized national or regional accrediting agency listed by the USOE may be licensed without specific proof of compliance with minimum standards.

Oregon (cont'd)

No person shall act as an agent for a vocational school unless first obtaining a license to do so. (Oregon Rev. Stats., §§345.010-.990, (1976)).

Oregon Administrative Rules of the Department of Education provide: standards for the application for private vocational school license (581-45-006), standards for licensing of private vocational schools (581-45-011); standards governing advertising and promotion for private vocational schools (581-45-021); standards governing solicitation for private vocational schools and their agents (581-45-060); and standards for a refund schedule for private vocational schools (581-45-025).

VI. Policy Analysis

State Statutes do not provide express authority for either the State Board or LEAs to contract with private vocational training sources. State Statutes do authorize community college districts to contract with private vocational schools for services. The State Plan provides that both the State Board and LEAs may enter into written contracts with public or non-public agencies and institutions, including post-secondary institutions. However, an opinion of the Attorney General indicated that "The State Board of Education or local school district does not have the authority to contract with private schools to conduct classes or to contract for schooling of individual students in existing classes in such private schools." (Synopsis of Opinion No. 5881 in 1976 Index to Attorney General Opinions, Oregon State Department of Education).

The Introduction to the Index of Attorney General Opinions states that, "Care should be taken when relying on Attorney General Opinions." Opinions cited may reference statutes repealed after publication of the opinion; some opinions may have been overruled by later opinions, by statutes, or by case law." Since this opinion was dated November 12, 1964, it is unclear whether it is still considered to be in force. As a result of the apparent discrepancy between the State Plan and this earlier opinion of the Attorney General, we have placed Oregon in a category which indicates that it is unclear whether either the State Board or LEAs have authority to contract with private vocational training sources.

South Dakota

I. State Statutes related to control of vocational education.

The State Board of Vocational Education "shall have the authority to cooperate with federal agencies in the administration of [the Vocational Education Act]" (South Dakota Compiled Laws, (SDCL), § 13-39-12 (1975, Rev.)).

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies and institutions for vocational education services.

SDCL, 13-39-26 states in part, that the State Board for Vocational Education and school districts "shall have the authority and power to enter into contracts with [private business or vocational institutions] to provide vocational training."

SDCL 13-29-27, states in part, that for the purposes of providing and having available vocational education, the school board of any school district is authorized and empowered to enter into any agreement or contract to provide for the training of those qualified who have school residence within such district, or to contract for any services in connection with such training which would be for the benefit of such contracting parties. Such contract of agreement shall not be subject to the regulation of the tuition law. The school district is hereby authorized to spend its moneys for vocational education.

The South Dakota Constitution, Art. VIII, §16 provides, in part:

"No appropriation of land, money, or other property or credits to aid any sectarian school shall ever be made by the state, or any county or municipality within the state . . . ."

III. State Regulations related to contracting for vocational education services.

IV. Provisions of the FY State Plan for Vocational Education related to vocational education under contract.

South Dakota (cont'd)

The South Dakota State Plan for the Administration of Vocational Education states in section 1.81 that the State Board, through the local public board of education, may contract with those private schools that provide vocational and technical training or education of the same standards and quality as required by the State Plan and which are open to supervision by the State Supervisory Staff. The criteria for contracts are: each contract must (1) be in writing; (2) incorporate applicable standards and requirements of the State Plan; (3) provide that instruction will be conducted as part of the State or local program under State Board supervision; (4) be reviewed annually; and (5) assure that funds paid to a contracting institution will be used only to lower the rate of or eliminate tuition, fees, or other charges that would otherwise be made.

In addition, the contracting agency will submit a plan containing the following information: (1) a cost analysis of the course, based on per pupil costs; (2) course outline containing the units of instruction with the time spent on each unit clearly identified; (3) procedure used to conduct evaluation and follow-up of the course; and (4) the procedure used to place graduates into industry.

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

No post-secondary institution, unless exempt, shall offer courses or programs of instruction in the state, and no person representing a school or organization shall solicit students unless first securing a permit from the Department of Education. No permit shall be issued unless the institution complies with rules established by the Secretary of Education.

These provisions shall not apply to courses offered by post-secondary institutions located in South Dakota which are accredited by a nationally recognized accrediting agency listed by the Commissioner of USOE or an out-of-state post-secondary institution which complies with the rules established by the Secretary of Education. (SDCL, 13-48-1 to -21)

Regulations governing post-secondary schools:

No post-secondary institution shall maintain, advertise, or solicit for any course of instruction, (unless exempted under SDCL 13-48-3) without first obtaining a license

South Dakota (cont'd)

from the Secretary. No license shall be issued unless the Secretary first determines that:

1) the applicant has a sound financial condition with resources available to meet financial obligations;
2) if the primary purpose of the course is to prepare students for occupational entry or advancement, that the course content or curriculum enables a majority of those available for and seeking employment after graduation to secure at least entry level positions in the field of training;
4) that the applicant has a sufficient number of qualified personnel;
5) that the premises, living quarters, instructional space and conditions meet local and state health and safety requirements. (A.R.S.D. 24:40:04:01 to :41)

VI. Policy Analysis

South Dakota presents a somewhat unique situation. State Statutes expressly authorize the State Board and school districts to contract with private business and vocational schools. The State Plan provides that the State Board may, through the LEA, contract with private vocational and technical schools. The contracting agency must submit a plan to the State Board. However, despite these state statutes and the State Plan, it appears, based on a recent opinion of the Attorney General, that such contracting might violate Article VIII §16 of the South Dakota Constitution.

With respect to this opinion (No. 76-70, July 20, 1976), the State Director for Vocational-Technical Education asked the Attorney General's opinion of the legality of a proposed contract with a private nursing school whose governing board and directors were all members of a religious order. The State Director's request for an opinion indicated that no sectarian doctrine was taught in the nursing school.

The Attorney General's opinion considered a recent ruling of the South Dakota Supreme Court which held unconstitutional under the state constitution a state statute authorizing the loan of textbooks to students in non-public schools. The opinion stated that

> "In view of the Court's interpretation of the McDonald v. Yankton Independent School District No. 1 and application of Article VIII §16 [of the South Dakota Constitution] to all nonpublic or private schools, I feel compelled to conclude that the . . .[private school]. . . cannot be the recipient of financial assistance through the Division of Vocational-Technical Education. Such aid would, under the McDonald decision, be in violation of §16, Article VIII of the South Dakota Constitution . . ." [Emphasis added.]

South Dakota (cont'd)

Thus, on the basis of an apparently very broadly phrased State Supreme Court decision, the Attorney General determined that the proposed contract with the private nursing school should not be authorized. Taking the Attorney General's opinion at face value, it appears that any attempt to contract with a private vocational training institution may raise constitutional issues under South Dakota's Constitution. However, the state statutes authorizing contracting with private vocational training institutions have not, to our knowledge, been held unconstitutional under South Dakota's Constitution. As a result of the Attorney General's opinion, we have placed South Dakota in a category which indicates that it is unclear whether either the State Board or LEAs would be allowed to contract with private vocational training sources.

Trust Territory of the Pacific

I. State Statutes related to control of vocational education.

II. Statutes related to authority to contract with non-public agencies or institutions for vocational education services.

III. Regulations related to contracting for vocational education services.

IV. Provisions of the FY 77 State Plan for Vocational Education related to vocational education under contract.

The State Plan for the Administration of Vocational Education section 1.81, points out that there are not private post-secondary vocational training institutions in the Territory.

Section 1.82 states, that charters are granted by the High Commissioner to Vocational schools to operate within the Territory. A written contract will be entered into with such schools when deemed practical to employ their services. Said contract will be in accordance with the Territory Code. Instruction will be provided as part of the vocational education program of the Territory, and will constitute a reasonable and prudent use of funds.

Contracts will be reviewed annually.

V. Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

VI. Policy Analysis

Although the State Plan indicates that contracts may be entered into with private vocational schools, we were not able to obtain a copy of the Territory Code. Consequently, we have placed the Trust Territory of the Pacific in a category which indicates that it is unclear whether authority exists to enter into such contracts.

E. The State Board Appears to Have Authority to Contract With Private Vocational Training Sources, But It Is Unclear Whether the LEAs Do

States or Territories

In This Category

1. Alabama
2. Arkansas
3. Connecticut
4. Florida
5. Maine
6. Maryland
7. Minnesota
8. Nevada
9. New York
10. North Carolina
11. Oklahoma
12. Rhode Island
13. Utah
14. Vermont
15. Virginia
16. West Virginia

Alabama

I. State Statutes related to control of vocational education.

The State Board of Education "shall have all necessary authority" to cooperate with [the Office of Education]" in the administration of the Act. (Code of Alabama, ch. 17, Tit. 52 §384 (Supp. 1973)).

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies and institutions for vocational education services.

"The county, city and independent school district boards of education, hereinafter called the local boards of education, under such rules and regulations as they shall determine, may provide assistance for residents of their respective districts for instruction on an elementary or secondary level at a private non-denominational institution when such instruction is not available to such residents at any public educational institution within the district . . . . Each local board of education may provide assistance for elementary or secondary school instruction at any private non-denominational institution, as it deems necessary, within or without the district . . . . The local board of education, in providing assistance in such instruction, may take into consideration differences in travel, tuition, and other expenses." (Code of Alabama, ch. 4C, §61(20) (1973)).

"For the purpose of allocating the minimum program fund or other state contributions to the local boards of education, the daily attendance of pupils attending private non-denominational schools and receiving assistance under the provisions of this chapter shall be counted as if they were attending public schools within the district." (Code of Alabama, ch. 4C, §61(21)

III. State Regulations related to contracting for vocational education services.

IV. Provisions of the FY 77 State Plan for Vocational Education related to vocational education under contract.

The Alabama State Plan for Vocational Education, section 1.81 provides, in part, that the State Board may enter into contractual arrangements with private postsecondary institutions or agencies when it determines that such can make a significant contribution to attaining the objectives of the State Plan and can provide substantially equivalent training at a lesser cost, or can provide equipment or services not available in public agencies or institutions.

The State Board may contract for vocational education at the secondary level under the same conditions.

Alabama (cont'd)

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

Any resident private school or resident business school that is accredited by a nationally recognized accrediting agency approved by the USOE is exempt from applying for accreditation from the State Department of Education: except that all bond requirements must be met before the Board can issue a license or permit.

All other schools operating in the state must secure a permit from the Department. Permits will be issued when the institution complies with standards for courses, curriculum, instruction, equipment, facilities, instructional materials and personnel as set forth by the Department. (Code of Alabama, ch. 45, §§641-651, (Supp. 1973)).

VI. Policy Analysis

State Statutes appear to provide implied authority for the State Board to contract with private vocational training sources, i.e., the State Board shall have all necessary authority to administer federal funds for vocational education. The State Plan provides that the State Board may enter into contracts for secondary and post-secondary vocational education services, with private institutions.

State statutes appear to provide express authority for LEAs to contract with private non-denominational schools at the secondary level. However, the State Plan does not authorize LEAs to enter into such contracts. Consequently, we have placed Alabama in a category which indicates that the State Board has such authority, but it is unclear whether LEAs do.

Arkansas

I. State Statutes related to control of vocational education.

"The State Board of Education is . . . designated the State Board for the purposes of carrying into effect the provisions of [the Vocational Education Act]. . . and shall have all necessary authority to cooperate with [the Office of Education] in the Administration" of the Act. (Arkansas Stats. Ann., §80-2514 (Supp. 1975)). (Emphasis added.)

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services.

State Statutes do not expressly authorize LEA contracting with private vocational training sources. However, they do provide, in part that "The board of directors of any school district or any county board of education or the board of trustees . . . of any State school, college or university, may cooperate with the state board in the establishment of vocational schools, departments, or classes giving instruction in vocational subjects. . ." (A.S.A. §80-2516 (Supp. 1975)). (Emphasis added.)

III. State Regulations related to contracting for vocational education services.

IV. Provisions of the FY 77 State Plan for Vocational Education related to vocational education under contract.

The Arkansas State Plan for the Administration of Vocational Education, section 1.8 provides, in part, that the State Board may make arrangements for the provision of any portion of a program of instruction on an individual basis or group basis by public or nonpublic agencies or institutions (other than the State Board or education agency) through a written contract with the State Board or through funding of instruction provided through contract between a LEA and a nonpublic agency or institution: Each contract shall describe the portion of instruction to be provided, and incorporate the standards and requirements of vocational education set forth in the state plan. Each contract shall be entered into only upon assurance that:
The contract is in accordance with state and local law, the instruction to be provided under contract will be conducted as part of the vocational education program of the state, and will constitute a reasonable and prudent use of funds.
Each contract will contain an assurance that funds will be used only to lower the rate of or eliminate tuition, fees and other charges which would normally be collected.
Each contract will be reviewed annually by the parties concerned. Section 1.81 provides that post-secondary vocational instruction may be provided in other than public institutions through arrangements with private postsecondary vocational training institutions, pursuant to 1.8.

Arkansas (cont'd)

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

Post secondary institutions desiring to operate in the state, other than state-supported schools, or a school defined by Act 416 of 1965 (§§80-4301 to -4311), or a school regulated by the state cosmetology board, shall be required to incorporate under applicable state laws, and to receive certification for offering education programs by the Arkansas Postsecondary Education Planning Commission. (A.S.A. ch. 33, §80-3384 (Supp. 1975)).

The State Board of Education has the sole authority to approve all private trade, technical, vocational and occupational schools and to issue licenses to schools which meet the standards set forth, including but not limited to: course offering, adequacy of facilities, financial stability, competent personnel and ethical operating procedures. No private school shall operate within the state without a license. All public educational institutions, (exclusive of any community college, state university of state-supported college) not offering baccalaureate degrees, shall comply with these standards, rules and regulations, but do not have to obtain a license. (A.S.A. ch. 43, §§80-4301 to -4311, (Supp. 1975)).

VI. Policy Analysis

Although State Statutes do not expressly authorize the State Board to contract with private vocational training sources, it appears that the broad language of A.S.A. §§80-2514 may provide implied authority for such contracting. The State Plan provides that the State Board may provide for vocational education (including post-secondary) through written contracts with public or non-public agencies. Thus, it appears that the State Board has implied authority to contract with private vocational training sources.

State Statutes do not expressly authorize LEAs to contract with private vocational training sources. Although the State Plan indicates that LEAs may enter into such contracts, it is unclear whether a state court would find that the general language of A.S.A. §80-2156 provides authority for LEAs to enter into such contracts.

Connecticut

I. State Statutes related to control of vocational education.

The State Board of Education is designated the State Board for Vocational Education. (Conn. Gen. Stats. Ann., §10-12, (1975)). The State Board is "empowered, subject to the provisions of the general statutes, to receive any federal funds made available" for vocational education and "to expend such funds for the purpose or purposes for which they are made available." (Conn. Gen. Stats. Ann., §10-11, (1975)).

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services.

The general authority of the State Board of Education is defined as "general supervision and control of the educational interests of the state," which include vocational education, and "shall provide leadership and otherwise promote the improvement of education in the state." (Conn. Gen. Stats. Ann., §10-4 (1975)).

III. State Regulations related to contracting for vocational education services.

IV. Provisions of the FY 77 State Plan for Vocational Education related to vocational education under contract.

The Connecticut State Plan for Vocational Education, provides in sec. 1.8 (Vocational Education Under Contract), that the State Board will arrange for training and retraining through public education agencies and institutions or through contractual arrangements with private education agencies or institutions, provided that it is determined that adequate facilities are not available in the public school program. Contracts will be in writing, and stipulate the nature of the training program with standards of instruction. The State Board, and local and regional boards approved by the State Board will determine in advance of the contract that (1) the contract is in accordance with state and local law, (2) the instruction provided under contract is conducted as part of the vocational-technical program of the state and will constitute a reasonable and prudent use of the funds available. Contracts will be reviewed annually. Contracts will include an assurance that there is a realistic relationship between the course or program and actual or anticipated employment opportunities and the abilities, interests and aptitude of persons to be trained.

Connecticut (cont'd)

Section 1.81 (Private Post-Secondary Vocational Training Institutions), provides in part, that the state board may enter into contracts with such private institutions if the state board or the LEA determines that the institution can make a significant contribution to attaining the objectives of the state plan, and achieve this at a lesser cost or provide equipment or services not available in public agencies or institutions. A private post-secondary training institution means a private business or trade school or technical institution or other vocational-technical school providing post-secondary education listed by the Division of Vocational-Technical Education, USOE.

Section 1.82, (Other Agencies and Institutions), provides, in part, that cooperative agreements may be executed with agencies, institutions, or organizations which provide a function related to state and local vocational education program operation.

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

No person, board, association, corporation, or school shall give instruction in any form or manner in any trade or any instruction which is claimed to qualify an individual for any position for which special occupational training is required, unless first obtaining a certificate from the State Board of Education authorizing the offering of such instruction. Requirements with respect to courses of instruction and the qualifications of instructors shall be determined by the State Department of Education with the advice of the Labor Department. (Conn. Gen. Stats. Ann., §10-8, (1975)).

The Regulations of the State Board of Education Concerning the Licensing of Schools Offering Training for Certain Occupations, secs. 10-8-8 to -17, (June 1966, as amended Dec. 1966) provides for regulations concerning: the qualifications of administrators, directors, instructors, and field representatives; Pupil/Teacher Ratios; course content; building and plant standards; admission procedures; and advertising.

Connecticut (cont'd)

VI. Policy Analysis

State statutes do not expressly authorize the State Board to contract with private vocational training sources. However, the general authority of the State Board appears to provide it with implied authority to contract with private vocational training sources. The State Plan provides that the State Board may arrange for training or retraining through contracts with private education agencies or institutions, including private post-secondary institutions.

State statutes do not appear to provide express or implied authority for LEAs to contract with private vocational training sources. Although the State Plan provides that LEAs may enter into such contracts, it is unclear whether a state court would find that LEAs have such authority.

Florida

I. State Statutes related to the control of vocational education.

The State Board of Education constitutes the State Board for vocational education. (Florida Stats. Ann., ch. 229, §229.053(2)(m)(1971)).

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services.

State statutes do not expressly authorize contracts with private vocational training sources. However, the State Board of Education has general powers, including the general powers to "determine, adopt or prescribe such policies, rules, regulations, or standards . . . as it may find necessary for the improvement of the state system of public education." (Florida Stats. Ann., ch. 229 §229.053(1)(1971)).

One of the general powers of LEAs is "to determine and adopt such policies and programs as are deemed necessary by it for the efficient operation and general improvement of the district school system." (Florida Stats. Ann., ch. 230, §230.11(1)(1971)). Furthermore, "The school board shall constitute the contracting agent for the district school system. It may, when acting as a body, make contracts . . ." (Florida Stats. Ann., ch. 230, §230.22(4)(1971)).

III. State Regulations related to contracting for vocational education services.

State Regulations do not expressly refer to contracts with private vocational training sources. However, the Administrative Rules of the Florida State Board of Education, in describing the scope of vocational education, state that, "Vocational education courses include . . . such other offerings as may be authorized by the Florida State Plan for vocational education including those of a pilot or experimental nature." (Chapter 6A-6.63 (Supp. No. 67)). Rule 6A-10.09 states, in part, that the Commissioner is authorized to enter into contracts for or on the behalf of the State Board of Education. However, Rule 6A-6.56(1) states that, "Vocational education instructional services shall be provided by qualified vocational teachers as defined in . . .[Board Rules]."

Florida (cont'd)

IV. Provisions of the FY 77 State Plan for Vocational Education related to vocational education under contract.

The Florida State Plan for the Administration of Vocational Education, provides in section 1.8, in part, that the State Board may contract for the provision of federally funded vocational education programs and services that meet the minimum standards established by the Board when the need for services is demonstrated and the LEA determines that it is unable to provide them. Such contracts will be negotiated with the LEA (if applicable) or the State Board, will be renewed annually, will be in writing and will contain a precise description of the program to be offered or the service to be performed and the standards to be met. Conditions for contracting with private post-secondary vocational training institutions and other agencies or institutions are the same as above.

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

No nonpublic college or independent post-secondary vocational, technical, trade or business school, shall operate in the state without a license from the State Board of Independent Colleges and Universities or the State Board or Independent Postsecondary Vocational, Technical, Trade and Business Schools. Upon recommendation of the boards, the State Board of Education shall adopt minimum standards, rules and regulations. Schools accredited by any accrediting agency recognized by the board shall be deemed in compliance, and upon initial application for a license and by making an annual report to the board, shall be granted a license. (Florida Stats. Ann., ch. 246, §§246.011 - .231 (1971), as amended (Supp. 1976)).

VI. Policy Analysis

Although state statutes do not refer expressly to contracting with private vocational training sources, it appears that the broad general language of §229.053(1) may provide implied authority for the State Board to enter into such contracts. Furthermore, State Regulations authorize the Commissioner of Education to enter into contracts for or on behalf of the State Board of Education. The State Plan provides that, subject to certain conditions, the State Board may contract with private vocational training sources. Thus, it appears that the State Board may have implied authority to contract with private vocational training sources.

Florida (cont'd)

Similarly, State, Statutes do not expressly authorize LEAs to contract with private vocational training sources. Although the State Plan appears to indicate that LEAs may enter into such contracts, it is unclear whether a state court would find that the general language of §230.22(1) and the general contract authority of §230.22(4) provide authority for LEAs to enter into such contracts.

Maine

I. State Statutes related to control of vocational education.

§2353 of the Me. Rev. Stats. Ann., (1974; as amended, Supp. 1976)), the State Board "shall have all necessary power to cooperate with the [Office of Education]" in the administration of federal funds for vocational education.

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies and institutions for vocational education services.

Section 2358 of the Maine Rev. Stats. Ann., (Supp. 1976), provides that the Commissioner of Educational and Cultural Services is authorized to enter into contracts with any academy or institute, which is serving one or more communities in lieu of a public secondary school, for the conduct of vocational course or courses which meet the same standards for approval as those conducted in public secondary schools. The Commissioner may reimburse such institutions for part of the cost of conducting approved vocational courses from funds available from the federal government for the purposes of vocational education.

III. State Regulations related to contracting for vocational education services.

IV. Provisions of the State Plan for Vocational Education related to vocational education under contract.

The Maine State Plan for Vocational Education, sec. 1.8 provides, that vocational instruction may be offered under contract with the State Board or LEA, provided that each contract is in writing, and includes the following items:

a) contract incorporates applicable standards and requirements of the State Plan,
b) contract is in accordance with state and local laws,
c) instruction under contract shall be conducted as part of the vocational program of the State,
d) contract constitutes a reasonable and prudent use of funds,
e) contract will be reviewed at least annually by the parties concerned,
f) each contract shall include assurance that all funds paid to a contracting agency or institution shall be used only to lower the rate of or eliminate tuition and other fees that would

Maine (cont'd)

otherwise be collected from persons receiving instruction.

Section 1.81 provides that the Department of Educational and Cultural Services may contract with private post-secondary vocational education institutions to provide vocational-technical education in such areas where public facilities are lacking or where instruction can be provided at a lower cost or where private institutions can make a significant contribution.

Section 1.82, provides, that arrangements may be made for any portion of the program of instruction by public or non-public agencies or institutions (other than the State Board or LEA) through a written contract with the State Board or LEA. Such contracts must be in compliance with Section 1.8.

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

No privately owned correspondence course may operate in the state unless first securing a permit from the state board of education. The school must provide a surety bond of $1,000 to be used for indemnification to any student suffering losses as a result of fraud or misrepresentation. (Me. Rev. Stats. Ann., ch. 319, §§2651 - 2656, (Supp. 1976)).

VI. Policy Analysis

State statutes do not provide express authority for the State Board to contract with private vocational training sources. However, it appears that the broad language of §2353, i.e., "all necessary power to cooperate with the [Office of Education] may provide implied authority for the State Board to enter into such contracts. Furthermore, §2358 provides express authority

Maine (cont'd)

for the Commissioner to enter into contracts with certain academies or institutions serving in lieu of a public secondary school for vocational education courses. The State Plan provides that the State Board may enter into written contracts with public or non-public agencies or institutes for vocational instruction, and that the Department of Educational and Cultural Services may contract with private post-secondary institutions.

State Statutes do not appear to provide express or implied authority for LEAs to contract with private vocational training sources. Although the State Plan indicates that LEAs may enter into such contracts, it is unclear whether a state court would find that LEAs have authority to do so.

Maryland

I. State Statutes related to control of vocational education.

The State Board of Education is designated as the State Board "for the purpose of carrying into effect the provisions of [the Vocational Education Act] . . ." (Maryland Code Ann., Art. 77, §133(3)(1976)).

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services.

State statutes do not expressly authorize either the State Board or LEAs to contract with private vocational training sources. However, with respect to the general duties of LEAs, state statutes provide, in part, that a county board of education "shall to the best of its ability cause . . . the policies of the State Board of Education to be carried into effect." (Md. Code Ann., Art. 77 §41(1976)).

III. State Regulations related to contracting for vocational education services.

IV. Provisions of the FY 77 State Plan for Vocational Education related to vocational education under contract.

The Maryland State Plan for Vocational Education, section 1.81 provides, in part that the State Board of Education or LEA may provide for vocational instruction in a private post-secondary institution only if: (1) the private institution can make a significant contribution to attaining the objectives of the State Plan; and (2) can provide substantially equivalent training at a lesser cost; or (3) can provide equipment or services not available in public institutions or agencies; and (4) such institutions are approved by the Commissioner.

All contracts will conform with the provisions of section 1.8, which are that: (1) each contract is in writing; (2) the contract incorporates applicable standards and requirements contained in the state plan; (3) the contract is in accordance with state and local law; (4) the contract constitutes a reasonable and prudent use of funds; (5) that the contract is reviewed annually by the parties concerned; and (6) that each contract includes an assurance that all funds paid to the contractor

Maryland (cont'd)

or institution will be used only to lower the rate of or eliminate tuition, fees and other charges that would otherwise be collected from persons receiving instruction.

Vocational instruction may be offered under contract with the State Board or LEA provided that the terms above are met.

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

Every secondary non-collegiate educational institution shall obtain a certificate of approval from the Board of Education. The Board shall issue a certificate if it finds that the facilities, conditions of entrance and scholarship, educational qualifications and standards are adequate and appropriate for the purposes of the institution. The board shall not issue a certificate to any institution which discriminates on the basis of race, color or national origin (Md. Code Ann., art. 77, sec. 11, (Supp. 1976)).

The State Board of Education shall require all private educational association, corporations, or institutions to report annually, as to enrollment and courses of study. (Md. Code Ann., art. 77, sec. 14, (Supp. 1976)).

VI. Policy Analysis

State Statutes do not expressly authorize the State Board to contract with private vocational training sources. However, the broad language of §133(3) suggests that the State Board may have implied authority to enter into such contracts, i.e., the State Board of Education is designated as the State Board "for the purpose of carrying into effect the provisions" of the Vocational Education Act. The State Plan indicates that the State Board may provide for vocational instruction under contract with private postsecondary institutions or other agencies or institutions. Thus, it appears that the State Board may have implied authority for such contracting.

State Statutes do not expressly authorize LEAs to contract with private vocational training institutions. Although the State Plan indicates that LEAs may enter into such contracts, it is unclear whether a state court would find that the general language of §91 provides LEAs with authority for such contracting.

Minnesota

I. State Statutes related to control of vocational education.

"The State Board of Education is designated the State Board for Vocational Education and has the duty of cooperating with the U.S. Office of Education or other federal agencies in the administration of the program of vocational education and is given all power necessary to such cooperation."
(Minn. Stats. Ann., ch. 124, §124.53, (1973)) (Emphasis added.)

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services.

Minn. Stats. Ann. §212.06 provides that all contracts made by the state board shall be in writing and signed by its executive officer. (Minn. Stats. Ann., ch. 212, (1973)).

III. State Regulations related to contracting for vocational education services.

IV. Provisions of the State Plan for Vocational Education related to vocational education under contract.

The Minnesota Plan for Vocational-Technical Education, provides in section 1.8, that in order to provide program opportunities that would not otherwise be available and to avoid duplication of program services available elsewhere, the State Board will permit LEAs to contract with other agencies and institutions. These arrangements must be included in the local annual plan of the LEAs administering the contract.

In addition the State Board may contract directly with other agencies or institutions in one of two ways:

1) with the LEA consenting and agreeing to assume the administration of such contract at a stated future date,
2) without LEA consent or agreement after formal determination that the contract best fulfills the purposes of vocational education in the area to be served, and the LEA is unwilling or unable to provide these services.

Section 1.81 provides that contracts may be entered into with private post-secondary vocational schools

Minnesota (cont'd)

when deemed advisable. All such contracts shall be approved by the State Board. Such courses shall provide training at an equal or lesser cost or provide equipment or services not available in public agencies or institutions. Such contracts will be in accordance with state law, conducted as part of the vocational education program of the state, meet the same standards and be reviewed annually.

New programs being proposed which necessitate new facilities at an area vocational-technical institution shall contain a review and consideration of the use of suitable existing private school facilities and services in that vicinity.

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

No school shall maintain, advertise, or solicit for any course of instruction unless first obtaining a license from the Commissioner of Education. Minimum standards to be met include: that the school must be in sound financial condition with sufficient resources to meet obligations; that there must be satisfactory training equipment and funds to adequately train students; that a sufficient number of qualified personnel exists; that the work and study premises are sanitary, safe, and healthful; and that each course of instruction will adequately prepare enrolled students for entry level positions in the occupation for which they have been trained. (Minn. Stats. Ann, ch. 141, §§141.21 - .36, (Supp. 1976)).

Minnesota Regulations, ch. 20 (EDU 380-388), provide specific standards for the licensing of proprietary schools, including: course content, school facilities and student housing, instructors qualifications, contents of course catalogs or brochures, placement records, solicitors, contracts, refunds, degree granting, and inspection.

Minnesota (cont'd)

VI. Policy Analysis

State Statutes do not provide express authority for the State Board to contract with private vocational training sources. However, the broad language of §124.53, i.e., the State Board "is given all power necessary to such cooperation," may provide the State Board with implied authority to enter into such contracts.

The State Plan provides that the State Board may enter into contracts with other agencies and institutions, and with private post-secondary vocational schools.

State Statutes do not appear to provide express or implied authority for LEAs to contract with private vocational training sources. Although the State Plan indicates that LEAs may enter into such contracts, it is unclear whether a state court would find that LEAs have such authority.

Nevada

I. State Statutes related to control of vocational education.

The State Board for Vocational Education shall consist of the State Board of Education." (Nev. Rev. Stats., §388.330 (1974)). "The State of Nevada accepts the provisions of [the Vocational Education Act]" (Nev. Rev. Stats., §387.050(1)(1974)). "In accepting the benefits of [the Vocational Education Act]. . . the state of Nevada agrees to comply with all their provisions . . ." (Nev. Rev. Stats., §387.050(4)(1974)).

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services.

III. State Regulations related to contracting for vocational education services.

IV. Provisions of the FY 77 State Plan for Vocational Education related to vocational education under contract.

The Nevada State Plan For the Administration of Vocational Education provides in section 1.81 that any LEA which is operating under an approved local vocational education plan and which receives support under P.L. 90-576 may contract with any private post-secondary vocational training institution to carry out specific student training objectives. Before entering into a contract the LEA must demonstrate that:

1) the private post-secondary institution can provide,
    a) substantially equivalent training at a lesser cost, or
    b) training not available in public agencies.
2) contracts are in accordance with state and local law,
3) the institution meets the same standards as required under the state plan for local public education agencies.

Section 1.82 provides, in part that any other agency or institution may submit a local plan for vocational education which may include a request for financial support under PL 90-576. Requirements for local plans must be met. In addition, the other agency or institution must demonstrate that:
1) it can provide substantially equivalent training at a lesser cost or training not available in public institutions,

Nevada (cont'd)

2) plan is in accordance with state and local laws,
3) the instruction will be conducted as part of the vocational education program of the state, meeting the same standards and constitute a prudent use of funds,
4) agreements will be reviewed annually by the State Director for Vocational Education.

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

No privately owned correspondence, business or trade school shall operate without a license from the State Board of Education. The school must be in compliance with minimum standards, including: that facilities such as equipment, tools, and classrooms are adequate in quality and numbers to offer the training the school alleges to offer; that the director, administrators, and instructors have adequate educational and experience qualifications; that the institution is financially sound and capable of fulfilling commitments; that the school is in compliance with all local, city, state and federal regulations (fire and sanitation codes); that the school maintains a reasonable refund schedule; and that advertising or sale practices are free from deception or errors. (Nev. Rev. Stats., §§394.200-.420, (1974)).

VI. Policy Analysis

State Statutes do not expressly authorize the State Board to contract with private vocational training sources. However, the general authority of the State Board could arguably be construed to provide implied authority for such contracting. The State Plan appears to indicate that the State Board may enter into such contracts with "any other agency or institution . . . ."

State Statutes do not appear to provide express or implied authority for LEAs to contract with private vocational training sources. Although the State Plan indicates that LEAs may contract with any private post-secondary vocational training institution, it is unclear whether a state court would find that LEAs have such authority.

New York

I. State Statutes related to control of vocational education.

The Regents of the University of the State of New York are designated as the State Board for "the purpose of carrying into effect the provisions of [the Vocational Education] Act . . ." (N.Y. Consolidated Laws, Vol. 16 §292 (McKinney, 1974))

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services.

III. State Regulations related to contracting for vocational education services.

IV. Provisions of the FY 77 State Plan for Vocational Education related to vocational education under contract.

The New York State Plan for Occupational Education, Part I provides in section 1.81 that the state board may arrange for training and retraining through contractual arrangements with private education agencies or institutions, provided that such institution can make a significant contribution to attaining the objectives of the state plan, and can provide substantially equivalent training at a lesser cost, or equipment and services not available in public agencies.

Section 1.82 provides that contracts may be made with private education agencies or institutions presently licensed under sec. 5001 of the Education Law, approved or registered under sec. 22, sec. 197, or sec. 200 of the Regulations of the Commissioner of Education, incorporated by the Board of Regents or created by State statute.

Section 1.83 provides that contracts shall stipulate the nature of the training programs and standards of instruction. The state board, and with the approval of the state board, the LEA, will determine in advance that:

1) the contract is authorized under state law,
2) the instruction will be conducted as part of the occupational education program of the state and will constitute a reasonable and prudent use of funds.

New York (cont'd)

Contracts will be reviewed annually.

Section 1.84 provides that all contracts shall contain an assurance that federal and/or state funds will be used to lower the rate of or eliminate tuition, fees or other charges normally collected.

Section 1.85 provides that contracts will contain an assurance that there is a realistic relationship between the course or program of instruction and actual or anticipated employment opportunities and the abilities, interest, and aptitude of persons to be trained.

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

No private business school shall operate unless it is registered by the Department of Education. All other private schools, (except those authorized to confer degrees by the state, or schools other than correspondence schools providing elementary or secondary education), shall obtain a license from the department of education. All business schools shall comply with minimum standards, including:

1) teacher qualifications - a school shall employ only teachers licensed by the Department of Education, whose qualifications are at least equal to those required of teachers of equivalent subjects in public secondary schools,
2) application and annual renewal application for registration, together with financial and statistical reports required by the Commissioner shall be filed on forms prescribed and provided by the Department,

New York (cont'd)

3) Accept for enrollment and instruction for approved diploma courses only pupils who have satisfactorily completed an approved secondary course of study or its equivalent.

All schools licensed or registered under this act shall be subject to the jurisdiction of the state education department, and to the following provisions:

- in every school the method and content of the advertising, the standards, and methods of instruction, the equipment and housing, the qualifications of teaching and management personnel, the methods of collecting tuition, and the sufficiency and suitability of the resources and equipment available shall comply with the standards of approval set forth in the regulations of the commissioner. The Commissioner may require the school to provide and maintain a bond. (N.Y. Consol. Laws, art. 101, §§5001-5005, (McKinney, Supp. 1976)).

The Regulations of the Commissioner of Education, part 126, ("Licensed private schools. Registered private business schools"), provides regulations for specific standards on: the conduct of the school; advertising, standards and methods of instruction; equipment and housing; qualifications of teachers and other personnel; enrollment agreements or contracts and methods of collecting tuition; and the licensing and registering procedure and records.

VI. Policy Analysis

Although state statutes do not provide express authority for contracting with private vocational training sources, it appears that implied authority exists for such contracting, i.e., the Regents are designated as the State Board for "the purpose of carrying into effect the provisions of" the Act. One of the provisions of the Act is authority to contract with private vocational training sources. Since the State Board is expressly authorized to carry out the provisions of the Act, it appears that the State Board is implicitly authorized to contract with private vocational training sources.

State Statutes do not appear to provide express or implied authority for LEAs to contract with private vocational training sources. Although the State Plan indicates that LEAs may enter into such contracts, it is unclear whether a state court would find that LEAs had such authority.

North Carolina

I. State Statutes related to control of vocational education.

"The State of North Carolina hereby accepts all the provisions and benefits of acts passed by the Congress of the United States providing federal funds for states for vocational and technical education programs: Provided, however, that the State Board of Education is not authorized to accept any such funds upon any condition that the public schools of this State shall be operated contrary to any provision of the Constitution or statute of this State." (North Carolina Gen. Stats. §115-230 (1975)).

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services.

"The State Board of Education shall have all necessary authority to cooperate with the United States Office of Education in the administration of the [Vocational Education Act] . . . and to administer the funds provided by the federal government and the State of North Carolina for the promotion of vocational education. The Board shall have full authority to formulate plans for the promotion of vocational education in such subjects as are an essential and integral part of the public school system of education of the State of North Carolina . . .(North Carolina Gen. Stats. §115-231(1975)).

III. State Department of Education Regulations or Administrative Code Regulations related to contracting for vocational education services.

IV. Provisions of the FY 77 State Plan for Vocational Education related to vocational education under contract.

The North Carolina State Plan for Vocational Education provides in sec. 1.81 that:

The State Board or a local public educational agency or institution may enter into written contractual arrangements with one or more private post-secondary occupational training institutions for the provision of any portion of the program of instruction on an individual or group basis. Such arrangements will be entered into only after the State Board or local educational agency has determined that such private institutions can make a significant contribution to attaining the objectives of the State Plan, and can provide substantially equivalent training at less cost, or can provide equipment or services not available in public agencies or institutions. In addition, the contract will be entered only upon assurance that:

North Carolina (cont'd)

a) The contract is in accordance with State or local law, and
b) The instruction to be provided under contract will be conducted as a part of the occupational education program of the State and will constitute a reasonable and prudent use of funds available under the State Plan.

All contracts shall be reviewed at least annually by the parties concerned. Section 1.82, provides in part, that:

Arrangements may be made through a written contract by the State Board or a local educational agency with public or non-public agencies or institutions for the provision of any portion of the program of instruction on an individual or group basis. Such contracts shall describe the portion of instruction to be provided by the public or non-public agency or institution and shall incorporate the standards and requirements of occupational instruction set forth in the State Plan. Determination must be made that:

a) The contract is in accordance with State or local law, and
b) The instruction to be provided under contract will be conducted as a part of the occupational education program of the State and will constitute a reasonable and prudent use of funds available under the State Plan.

All contracts must be reviewed at least annually by the parties concerned.

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

The State Board of Education shall have the authority to issue licenses to private schools and educational institution, and to have general supervision over business, trade, and correspon-ence schools. Licensed schools must: maintain adequate,

North Carolina (cont'd)

safe and sanitary facilities; maintain sufficient and qualified teaching staff, and carry out advertised promises and contracts (N.C. Gen. Stats., art. 31, ch. 115 §§115-245 to -254.1, (1975)).

The Regulations and Standards for Licensing Private Business, Trade and Real Estate Schools, (Feb. 1, 1976) (N.C. Ad. Code, sec. 2C.0203-0205), provides specific regulations for: licensing application; school plant and equipment; administration; advertising; admissions requirements; instructional program; instructional personnel; and financial stability.

The Rules and Standards for Licensing Non-Public Educational Institutions to Confer Degrees, (Revised Feb., 1976, Board of Governors, Univ. of N.C.) provides specific regulations, including:

1) minimum standards on the charter, period of operation, program quality and control, student records, compliance with ordinances and laws, finances, advertising, cancellation and refund policy, and agents;
2) accreditation as evidence of compliance with minimum standards;
3) the procedure for implementation of rules and standards;
4) enforcement.

VI. Policy Analysis

State Statutes do not provide express authority for the State Board to contract with private vocational training sources. However, the general authority of the State Board appears to provide it with implied authority to contract with private vocational training institutions, i.e., the State Board has all necessary authority to cooperate with the Office of Education in administering federal vocational education legislation. The State Plan provides that the State Board may contract with private post-secondary training institutions, and other other public and non-public agencies or institutions.

State Statutes do not appear to provide either express or implied authority for LEAs to contract with private vocational training institutions. Although the State Plan authorizes such LEA contracting, it is unclear whether a state court would find LEAs have such authority.

Oklahoma

I. State Statutes related to control of vocational education.

"The State Board of Vocational and Technical Education shall have the following powers and duties . . . (3) cooperate with, and enter into agreements with, and administer programs of, and receive federal funds from [DHEW] and other federal agencies in matters relating to vocational and technical education, and be the sole state agency for such purposes." (Oklahoma Stats. Ann., §14-1033 , 1976))

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services.

"The State Board of Vocational and Technical Education shall have the following powers and duties: . . . (6) Enter into such agreements and contracts with the State Board of Education, boards of trustees of community, and junior colleges, boards of education of independent and dependent school districts, boards of education for area school districts for vocational and for technical schools, private education and training institutions, public or private industry, and boards of directors of community action programs, as may be necessary or feasible for the furtherance of vocational and technical training within the state." (Oklahoma Stats. Ann., art. XIV, §14-103 (1973)) (Emphasis added.)

III. State Regulations related to contracting for vocational education services.

The Operations and Procedures Manual of the Oklahoma State Department of Vocational and Technical Education (1974-1975), in the section on "Reimbursement; Policies of the State Board of Vocational and Technical Education in Allocating Vocational Education Funds for salaries of Vocational Education Teachers and Other Vocational Education Personnel," provides for allocations as reimbursement for local school districts or public education institutions. The Manual does not refer to reimbursement related to private vocational training sources.

Oklahoma (cont'd)

IV. Provisions of the State Plan for Vocational Education related to vocational education under contract.

The Oklahoma State Plan for the Administration of Vocational Education (FY 77), section 1.8, provides in part, that the State Board or LEA will provide vocational education under contract with agencies and institutions other than the LEA when that appears to be the best method to offer the education. Written contracts will be drawn which describe the portion of instruction to be provided and incorporate the standards and requirements of vocational instruction as set forth in the state plan.

Contracts shall be entered into only upon determination that: (1) the contract is in accordance with state or local law, (2) the instruction provided will be conducted as part of the vocational education program of the state and will constitute a reasonable and prudent use of funds, and (3) the contract contains an assurance that Federal, State and local funds paid to the contracting agency will be used only to lower the rate of or eliminate tuition, fees or other charges which would otherwise be collected. Such contract will be reviewed at least annually by the parties concerned.

Section 1.81 provides, in part that post-secondary vocational instruction may be provided through arrangements with private post-secondary vocational training institutions only where the state board determines that such can make a significant contribution to attaining the goals of the state plan, and can provide substantially equivalent training at a lesser cost, or equipment or services not available in public institutions.

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

Oklahoma (cont'd)

No private school may operate unless it has first acquired a license from the Board of Private Schools. The board shall issue a license to any school accredited by a regional or national accrediting agency recognized by the USOE without further evidence of compliance. The board shall fix minimum standards which shall include standards for courses of instruction and training, qualifications of instructors, financial stability, advertising practices, and refund of tuition practices. Oklahoma Stats. Ann. art. XXI, §§21-101 to -115 (1973), as amended (Supp. 1976).

VI. Policy Analysis

State statutes authorize the State Board to enter into contracts with private education and training sources. The State Plan provides that the State Board will provide vocational education under contract with agencies and institutions (other than the LEA), including post-secondary institutions.

State statutes do not appear to provide express or implied authority for LEAs to contract with private vocational training sources. Although the State Plan indicates that LEAs may enter into such contracts, it is unclear whether a state court would find that LEAs have such authority.

Rhode Island

I. State Statutes related to control of vocational education.

The Board of Regents for Education is designated the State Board for vocational education. (Rhode Island Gen. Laws Ann., §§16-49-1, 16-49-4(9), (Supp. 1976))

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services.

The State Board for Vocational Education "shall have and shall exercise all powers necessary to cooperate, on behalf of the State of Rhode Island, with the federal office of education in the administration of the provisions of [the Vocational Education Act]" Rhode Island Gen. Laws Ann., §16-8-3, (1975).

III. State Regulations related to contracting for vocational education services.

IV. Provisions of the FY 77 State Plan for Vocational Education related to vocational education under contract.

The Rhode Island State Plan for Vocational Education, section 1.8, provides that arrangements may be made for the provision of any portion of the program of instruction on an individual or group basis by public or non-public agencies or institutions (other than the State Board or LEA), through a written contract with the State Board or LEA. Such contract shall describe the portion of instruction to be provided by such an agency or institution, and incorporate the standards and requirements of vocational education set forth in the State Plan. Such a contract shall be entered into only upon determination of satisfactory assurance that,

(a) the contract is in accordance with State and local law,
(b) the instruction provided will be conducted as part of the vocational education program of the State and will constitute a reasonable and prudent use of funds, and
(c) the contract contains an assurance that Federal, State and local funds paid over to the contracting agency or institution will be used only to lower the rate of or eliminate tuition, fees or other charges which would otherwise be collected from persons benefiting from such portion of the program. Such contract will be reviewed at least annually by the parties concerned.

Rhode Island (cont'd)

Section 1.82 provides that post-secondary instruction may be provided in private institutions only through arrangements pursuant to section 1.8, where such an institution can make a significant contribution to attaining the objectives of the state plan, and can provide substantially equivalent training at a lesser cost, or can provide equipment or services not available in public agencies or institutions.

Section 1.82 provides that, consistent with section 1.8, the state board may provide vocational education under contract with other agencies and institutions whenever in its judgements, such vocational education may be conducted in such manner and at such cost as will benefit the State and the persons to be trained.

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

All private schools offering instruction shall be registered with the Board of Regents. No school shall operate until they have received approval from the Board. Such schools shall report annually as to the number of pupils enrolled, the fields of instruction covered, the length of the course(s) the number of teachers employed, - as well as any additional information that the Board may require. (Rhode Island Gen. Laws Ann., ch. 40, §§16-40-1 to -15, (Supp. 1975)).

VI. Policy Analysis

State Statutes do not provide express authority for the State Board to contract with private vocational training sources. However, it appears that broad language of §16-8-3, i.e., "shall exercise all powers necessary", provides implied authority for the State Board to enter into such contracts. The State Plan provides that instruction may be provided in public or non-public agencies or institutions, including post-secondary institutions, through written contracts with the State Board. The State Board may also contract with other agencies and institutions. State Statutes do not appear to provide express or implied authority for LEAs to contract with private vocational training sources. Although the State Plan indicates that LEAs may enter into such contracts, it is unclear whether a state court would find that LEAs have such authority.

Utah

I. State Statutes related to control of vocational education.

The State Board of Education is designated as the State Board for Vocational Education. (Utah Code Ann., §53-16-2, (1975)).

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services.

The State Board for Vocational Education "shall have all necessary authority to cooperate with [the Office of Education] in the administration of [the Vocational Education Act] (Utah Code Ann. §53-16-5(1975)).

III. State Regulations related to contracting for vocational education services.

IV. Provisions of the FY 77 State Plan for Vocational Education related to vocational education under contract.

The Utah State Plan, section 1.81, provides that the staff and local education agencies may arrange, through approval of the State Board, contracts with private post-secondary vocational training institutions and use federal funds when these private institutions can make a significant contribution to attaining the objectives of the State Plan with significant cost effectiveness. The instruction provided under contract will be conducted as part of the vocational education program of the State, and will meet the same standards. Contracts will contain the following provisions:

a. A rationale for conducting the program.
b. The objectives of the training program expressed in measurable student achievement terms.
c. The qualifications and background of administrative and instructional personnel.
d. Adequate training facilities to be used.
e. A process for selecting and enrolling students.
f. The length of the training program showing hours per day, days per week, weeks per year, and total teacher-student contact hours.
g. Maximum number of students to be enrolled in each class.
h. The procedure to be used for job placement.
i. Other pertinent data requested by the State Board.

Utah (cont'd)

Section 1.82 provides, that the staff and LEA may arrange, through approval of the State Board, contracts with other agencies and institutions to provide vocational training. These contracts shall contain the information outlined in section 1.81.

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

There are no state statutes governing the licensing or accrediting of proprietary schools in Utah.

VI. Policy Analysis

State Statutes do not appear to provide express authority for the State Board to contract with private vocational training sources. However, the general authority of the State Board may provide implied authority for the State Board to enter into such contracts. The State Plan provides that the State Board may contract with private post-secondary vocational training institutions and other agencies and institutions.

State Statutes do not appear to provide either express or implied authority for LEAs to contract with private vocational training sources. Although the State Plan indicates that LEAs may enter into such contracts, it is unclear whether a state court would find that LEAs have suth authority.

Vermont

I. State Statutes related to control of vocational education.

The State Board of Education shall "constitute the state board for vocational education and perform all powers and duties pertaining to vocational education and act as the state approval agency for educational institutions conducting vocational training." (Vermont Stats. Ann., T.16 §164(10),(1976)).

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services.

The State Board shall "have the authority to enter into agreements with . . . foundations, agencies or individuals for service, educational programs or research projects." (Vermont Stats. Ann., T.16§164(2),(1976)).

The school board of a school district, in addition to other duties specifically assigned by law, "shall: . . .(2) Have the power to take any action which is required for the sound administration of the school district. The Commissioner, with the advice of the attorney general, shall decide whether any action contemplated or taken by a school board under this subsection is required" for the sound administration of the school district (Vermont Stats. Ann., T.16§563(2),(1976)).

III. State Regulations related to contracting for vocational education services.

IV. Provisions of the FY 77 State Plan for Vocational Education related to vocational education under contract.

The Vermont State Plan for the Administration of Vocational Education, section 1.8, states in part, that the State Board, (or, subject to the approval of the State Board, the LEA), may contract with private non-profit education agencies to provide vocational education programs, when:

1) programs may be provided more effectively and at a lower cost, or
2) better programs may be provided, or
3) vocational education opportunities may be made available to persons who could otherwise not be reached.

Section 1.81 provides in part, that subject to the approval of the State Board, post-secondary vocational instruction may be provided under contract by private non-profit institutions, where the State Board or LEA determines that such an institution can make significant contribution to the objectives of the State Plan and can provide substantially equivalent training

Vermont (cont'd)

at a lesser cost, or can provide equipment or services not available in public agencies or institutions.

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

The articles of association of a corporation organized to engage in higher education shall be accompanied by a certificate granted by the State Board, acting on the advice of the Higher Education Council. The certificate will state that the corporation is engaged in conducting a bona fide institution of higher learning and has, or will have, the resources, including personnel, requisite for the conduct of such an institution. No corporation shall grant a degree of any type unless authorized and certified by the State Board. This shall not apply to an institution chartered in another state and accredited by applicable regional accrediting agency recognized by the state. (Ver. Stats. Ann., T. 16, §174, (1976)).

VI. Policy Analysis

State Statutes do not expressly authorize the State Board to contract with private vocational training sources. However, the general authority to enter into agreements with agencies and individuals for educational programs and services appears to provide implied authority for the State Board to enter into such contracts. The State Plan indicates that the State Board may contract with private non-profit education agencies or institutions.

State Statutes do not expressly authorize LEAs to contract with private vocational training sources. Although school boards of a school district have the power to "take any action which is required for the sound administration of the school" and the State Plan indicates that LEAs may enter into such contracts with private non-profit agencies or institutions, it is unclear whether a state court would find that LEAs have authority to contract with private vocational training sources.

Virginia

I. State Statutes related to control of vocational education.

"The State Board is delegated to act as the State Board of Vocational Education, to carry out the provisions of the federal act to provide for the promotion of vocational education . . ." (Code of Virginia, §22-319 (1950) as amended (1976)) (Emphasis added.)

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services.

State Statutes do not expressly authorize either the State Board or LEAs to contract with private vocational training sources. However, LEAs are authorized to "contract, or be contracted with . . ." (Code of Virginia §22-63 (1950), as amended (1976)).

III. State Regulations related to contracting for vocational education services.

IV. Provisions of the FY 77 State Plan for Vocational Education related to vocational education under contract.

The Virginia State Plan for the Administration of Vocational Education states, in part (section 1.8) that the present policy of the State Board does not provide for vocational education under contract with agencies other than the LEA. The LEAs may enter into a contract to provide vocational education that is not otherwise available. To do so, a contract should be developed by the local school division and submitted to the vocational division for review. This review will include an appraisal of the costs, the type of training to be provided, the number of persons to be served, and the effect on the objectives set forth in the long-range and annual plans. Results of the review will be forwarded to the local school district with approval or disapproval with the reasons for such actions.

Virginia (cont'd)

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

It shall be unlawful for any privately owned trade, technical, business or correspondence school to be operated in this State without having applied for and being issued a certificate of approval by the Board of Education. Any school shall be qualified to receive a certificate of approval when it has complied with the standards, rules and regulations of the board, and has paid the fee prescribed for such a certificate, and, after an inspection of its facilities has been made by the State Department of Education and a report filed with the Board, such facilities have been approved by the Board Applications for approval shall contain the following information:

(1) the title or name of the school together with the names of its owners, controlling officers, and managing employees,
(2) the specific fields, subjects, and courses of instruction which will be offered and specific purpose of such instruction,
(3) a description of the physical, safety and sanitary facilities,
(4) a specific listing of the equipment available for instruction in each field,
(5) the maximum anticipated enrollment to be accommodated with the equipment available in each specified field and the ratio of students to instructors,
(6) the educational and teaching qualifications of the instructors and supervisors in each field,
(7) the financial resources available to equipment, maintain and operate the school,
(8) the form and content of the student enrollment agreement and the method of collecting and refunding tuition,
(9) copies of all advertising used by the school,
(10) a surety bond payable to the state of Virginia, the amount to be determined by the total maximum enrollment at any one time of the school. (Code of Virginia, ch. 15.3, §§22-330.17 to -330.35, (1950) as amended (1976)).

Virginia (cont'd)

VI. Policy Analysis

Although State Statutes do not expressly authorize the State Board to contract with private vocational training sources, it appears that the State Board may have implied authority to do so, i.e., the State Board is authorized to "carry out the provisions of the [Vocational Education Act]." The State Plan indicates that the "present policy of the State Board does not provide for vocational education under contract with agencies other than the LEA." Thus, it appears that the State Board may have implied authority for such contracting, but does not choose to exercise it.

State Statutes do not expressly authorize LEAs to contract with private vocational training sources. Although the State Plan indicates that LEAs may enter into such contracts, it is unclear whether a state court would find that the general contract authority of §§22-63 would provide authority for LEAs to contract with private vocational training sources.

West Virginia

I. State Statutes related to control of vocational education.

The state board of education is authorized and empowered to accept and expend for the purpose designated any federal funds made available to the state for vocational education. (West Virginia Code, §18-10-8(1977)). The State Board "shall have the full power to do all things necessary in the formulation and execution of plans for the provision of education in agriculture, trades and industries . . ."(Emphasis added). (West Virginia Code §18-10-5(1977)). The State Board is "authorized and empowered to carry out the provisions of [the Vocational Education Act]. . ." (West Virginia Code, §18-10-9(1977)).

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services.

"The county board of education shall be a corporation . . . and as such may . . . contract and be contracted with . . ." (West Virginia Code §18-5-5(1977)).

III. State Regulations related to contracting for vocational education services.

IV. Provisions of the FY 77 State Plan for Vocational Education related to vocational education under contract.

The Vocational Education Plan of West Virginia (Part I) section 1.8, states, in part, that the State Board may enter into contracts with private vocational training institutions to provide vocational training on a class basis when such training can be provided at a lower cost, or can provide equipment or services not available in public institutions. Contracts may be negotiated through LEAs. The contract shall describe the portion of instruction to be provided by the private institution and incorporate the standards and requirements of vocational instruction as set forth in the policies of the State Board of Education. Contracts shall be reviewed annually by the parties concerned.

Section 1.81 provides, in part, that the State Board may enter into contracts with private post-secondary training institutions whenever such institutions can make a significant contribution to attaining the program objectives of the State Plan and can provide equivalent training at a lesser cost than an LEA or provide equipment or services not available in the LEA. The private institution must appear on the approved list of such schools, as maintained by the USOE.

West Virginia (cont'd)

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

Except for those correspondence, business and occupational and trade schools accredited by a nationally recognized accrediting association approved by the board of education, it shall be unlawful for such schools to operate without obtaining a permit from the Board of Education. Schools exempted from obtaining permits must obtain authorization to operate. (West Virginia Code, §18-2-10, (1977)).

The Board of Education Rules and Regulations Governing Registration of Agents of Privately-Owned Correspondence, Business, Occupational, and Trade Schools Soliciting Enrollments in West Virginia (to implement §18-2-10) provides standards and information concerning registration with the State Board of Education; permits; application forms; cancellation of permits; student applications and contracts; permits not constituting accreditation; penalties for violations; and renewal of permits.

VI. Policy Analysis

State statutes do not expressly authorize the State Board to contract with private vocational training institutions. However, it appears that the general authority of the State Board may provide it with implied authority to enter into such contracts. The State Plan indicates that the State Board may enter into contracts with private vocational training institutions.

State Statutes do not provide either express authority for LEAs to contract with private vocational training sources. Although LEAs have general contract authority and the State Plan indicates that LEAs may contract with private vocational training sources, it is unclear whether a state court would find that LEAs have authority to enter into such contracts.

F. It Is Unclear Whether the State Board Has Authority to Contract With Private Vocational Training Sources, But It Appears That the LEAs Do Not

States or Territories

In This Category

1. Wisconsin

Wisconsin

I. State Statutes related to control of vocational education.

The Board of Vocational, Technical and Adult Education "shall cooperate with the federal government in carrying out any federal act pertaining to vocational, technical and adult education." (Wisc. Stats. Ann., §38.04(5), (Supp. 1976)).

II. State Statutes or State Constitutional provisions related to authority to contract with non-public agencies or institutions for vocational education services.

"The Board shall determine the organization, plans, scope, and development of vocational technical and adult education." (Wisc. Stats. Ann. §38.04(1), (Supp. 1976)).

Wisconsin Constitution, Art. 1, sec. 8, provides that ". . . nor shall any money be drawn from the treasury for the benefit of religious societies, or religious or theological seminaries . . ."

III. State Regulations related to contracting for vocational education services.

IV. Provisions of the State Plan for Vocational Education related to vocational education under contract.

The Wisconsin State Plan, provides in section 1.8, in part, that the State Board will provide vocational education services under contract in accordance with the manner set forth. All such contracts shall be reviewed annually.

Section 1.81, provides in part, that the State Board will provide vocational education services under contract with private post-secondary vocational training institutions only where such can make a significant contribution to the objectives of the State Plan, and can provide substantially equivalent training at a lesser cost, or services or training not available at a public institution. The services and facilities of any public or private education agency shall be deemed adequate for the purposes of providing vocational education services upon the finding by the State Board that the school:

1) is generally regarded as offering quality education and/or training based upon such factors as its placement record and accreditation status,

2) will provide instructional staff that meets or exceeds Wisconsin standards of training, education, and experience for teaching similar courses. As one indication of qualification, teachers must hold or be eligible to hold an appropriate credential. Credentials deemed most appropriate are those now used in instructional programs preparing for occupational proficiency. These are the several vocational education credentials and the credentials authorizing specialized teacher service for classes for adults,
3) will offer course of instruction based on recognized needs of the trainees and will provide skills and related instruction requisite for training in the field,
4) has developed suitable standards that meet the minimum level of competency identified by the Wisconsin State Employment Service for the occupation for which the training is given,
5) will have the facilities necessary for the training provided, including but not limited to, space, equipment, supplies and teaching aids,
6) establish and maintain appropriate standards relating to health and safety,
7) is financially sound and capable of fulfilling its committments,
8) assures that training is given without regard to race, creed, color or national origin,
9) assures that all training programs will make maximum use of local vocational advisory committees.

V. State Statutes and/or Regulations for minimum standards for the licensing of proprietary schools.

The Educational Approval Board shall: investigate the adequacy of courses of instruction offered to residents of the State and establish minimum standards for such courses; investigate the adequacy of the school equipment, facilities, instructional materials and establish minimum standards thereof; establish rules to prevent fraud and misrepresentation in the sale and advertising of courses; establish minimum standards for a tuition refund policy; require schools to furnish information concerning facilities, curricula, instructors, enrollment policies, and refund policies; issue approvals and permits upon evidence of compliance with standards. No person shall solicit for a course of instruction without a permit. (Wisc. Stats. Ann., §38.51, (Supp. 1976)).

VI. Policy Analysis

State Statutes do not expressly authorize the State Board to contract with private vocational training sources. It is unclear

Wisconsin (cont'd)

whether the general powers of the State Board would be construed to provide implied authority to enter into such contracts. However, the State Plan indicates that the State Board may contract with private post-secondary vocational training institutions.

State Statutes do not appear to provide express or implied authority for LEAs to enter into such contracts. An opinion of the Attorney General indicates the district vocational, technical and adult education boards may only contract with public educational institutions for instructional services. (61 Op. Atty. Gen. 345, (1972)). Consequently, we have placed Wisconsin in a category which indicates that LEAs do not have authority and it is unclear if the State Board does.

SUMMARY TABLE OF STATE CONTRACTING STATUTES

STATE	Both State Board and LEAs Appear To Have Authority To Contract	Neither State Board Nor LEAs Appear To Have Authority To Contract	State Board of Education Can Contract But LEAs Appear To Lack Authority	Unclear Whether State Board or LEAs Have Authority to Contract	State Board of Education Can Contract But It Is Unclear Whether the LEAs Do	Unclear If the State Board Has Authority It Appears That LEAs Do Not
Alabama					x	
Alaska			x			
American Samoa				x		
Arizona	x					
Arkansas					x	
California	x					
Colorado	x					
Connecticut					x	
Delaware			x			
District of Columbia		x				
Florida					x	
Georgia		x				
Guam				x		
Hawaii			x			
Idaho			x			
Illinois	x					
Indiana				x		
Iowa	x					
Kansas	x					
Kentucky		x				
Louisiana			x			
Maine					x	
Maryland					x	
Massachusetts				x		
Michigan	x					
Minnesota					x	
Mississippi		x				
Missouri				x		
Montana			x			
Nebraska		x				
Nevada					x	
New Hampshire				x		
New Jersey		x				
New Mexico			x			
New York					x	
North Carolina					x	
North Dakota	x					
Ohio	x					
Oklahoma					x	
Oregon				x		
Pennsylvania	x					
Puerto Rico	x					
Rhode Island					x	
South Carolina		x				
South Dakota				x		
Tennessee			x			
Texas	x					
Trust Territory of the Pacific				x		
Utah					x	
Vermont					x	
Virginia					x	
Virgin Islands	x					
Washington	x					
West Virginia					x	
Wisconsin						x
Wyoming	x					

GLOSSARY

COOPERATIVE ARRANGEMENTS - 20 U.S.C. 1263(a)(9). Exchange and use of occupational information among public employment offices, the state board, LEAs and other agencies, organizations and institutions to facilitate the development of vocational education programs, services and activities.

LOCAL EDUCATIONAL AGENCY (LEA) - 20 U.S.C. 1248(9). A board of education or other legally constituted school authority having administrative control and direction over local public schools or any public educational institution having administrative control of a vocational education program.

POSTSECONDARY EDUCATIONAL INSTITUTION - 20 U.S.C. 1248(15) A nonprofit institution legally authorized to provide postsecondary education for persons sixteen years of age or older who have graduated from or left elementary or secondary school.

PRIVATE POSTSECONDARY VOCATIONAL TRAINING - Section 102.5 (b)(1), 35 F.R. 7338, (May 9, 1970). Defined by incorporating by reference the statutory definition of private vocational training institutions as defined elsewhere in this glossary.

PRIVATE VOCATIONAL TRAINING INSTITUTION - 20 U.S.C. 1248 (11). Business, grade and technical institutions authorized by a state to provide postsecondary vocational programs or technical education to individuals who have completed or left elementary or secondary schools.

STATE BOARD - 20 U.S.C. 1248(8). Designated or created by state law as the sole state agency responsible for the administration of vocational education.

VOCATIONAL EDUCATION - 20 U.S.C. 1248 (1). Vocational or technical training or retraining either given in schools or classes under public supervision and control or under contract with a state board or local education agency (LEA).

VOCATIONAL TRAINING - 20 U.S.C. 1248(14). Training or retraining which is conducted as part of a program designed to prepare individuals for gainful employment as semi-skilled or skilled workers, technicians, or subprofessionals in recognized or emerging occupations.

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The following list contains the names of person(s) in each state who provided information and advice during the course of the study. The authors would like to acknowledge and express our appreciation for their cooperation and assistance in providing the project with materials and information that helped make the study possible.

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